

**REQUEST FOR PROPOSAL**  
**PROFESSIONAL ADVERTISING AND RELATED SERVICES**  
**NORTH CAROLINA EDUCATION LOTTERY**

**RFP # LC-000003**

**January 11, 2006**

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## PART I- GENERAL INFORMATION

### 1.1 INTRODUCTION

Legislation creating the North Carolina State Education Lottery ("**NCEL**") was signed into law in August 2005 along with the 2005 Appropriations Act. In accordance with that legislation, entitled the North Carolina State Lottery Act (the "**Act**"), the NCEL must act for the benefit of the people of North Carolina through the operation of a lottery and strive to maximize net lottery proceeds in order to fund various state educational programs. The Act established the North Carolina State Lottery Commission (the "**Commission**") to oversee the operation of the NCEL together with the NCEL Director (the "**Director**") hired by the Commission.

The purpose of this procurement (the "**Procurement**") and Request for Proposal RFP # LC-000003 ("**RFP**") is to invite responsible proposals ("**Proposals**") from qualified and reputable North Carolina agencies, ("**Vendors**") to provide quality professional advertising and related services for lottery products.

The NCEL currently intends to execute only one contract (the "**Contract**") as a result of this Procurement, if any Contract is executed at all, encompassing all of the products and services contemplated in this RFP and Procurement; provided, however, nothing herein obligates the NCEL to sign any Contract, or only one Contract, and the Commission and the NCEL reserve the right to sign one or more Contracts, or no Contracts, as they determine in their sole discretion to be in the best interests of the NCEL and the State of North Carolina.

All Vendors must fully acquaint themselves with the NCEL's needs and requirements and obtain all necessary information and understandings to be able to develop an appropriate solution and to submit responsive and effective Proposals. Vendors are encouraged to be creative in their Proposals and provide best in class and creative solutions so that the NCEL can maximize the revenues it raises as responsibly as possible.

The NCEL is an independent, self-supporting and revenue raising agency of the State of North Carolina. It plans to employ approximately three hundred (300) people statewide and have approximately five (5) regional offices in addition to the Raleigh headquarters by the start-up of instant ticket sales in April 2006. The exact numbers of employees, retailers selling the NCEL products and regional offices is subject to change in the discretion of the Commission. The NCEL is committed to maximizing revenues for specific education programs in North Carolina by providing entertaining lottery products and quality customer service to retailers and players, while maintaining its integrity and the integrity of its games.

The NCEL requires that instant ticket sales begin on or before April 5, 2006 (the "**Startup Deadline**"), and online ticket sales begin on or before June 14, 2006 (the "**Online Deadline**"). In connection with launch of the instant ticket and the online ticket sales, the NCEL will require marketing support in order to ensure the success in advertising and marketing the instant ticket and online lottery games. The NCEL plans for the Vendor that is selected to provide the services contemplated by this RFP (the "**Successful Vendor**") to develop and implement an advertising and media plan and to do all things necessary to enable the NCEL to achieve all of its objectives as set forth in this RFP.

### 1.2 NCEL OBJECTIVES

All Proposals in response to this RFP shall reflect at least the following overall goals and objectives of the NCEL:

- To Conduct advertising and related programs in such a manner as to promote the positive image and integrity of the NCEL and the programs funded with lottery proceeds.

- Effectively and efficiently market the NCEL products in accordance with the Act and within any rules, regulations, procedures or policies officially adopted by the NCEL.
- To annually increase revenue to the North Carolina State Lottery Fund (the “**Education Lottery Fund**”), and meet the Act’s requirement to transfer at least thirty-five percent (35%) of total annual revenues to the Education Lottery Fund;
- To market high quality products that provide entertainment and customer satisfaction;
- To ensure that the NCEL receives services from Vendors who are financially sound and experienced and who maintain favorable reputations within the lottery industry for proper ethics and contract performance;
- To ensure that the Successful Vendor is capable of providing the services called for in this RFP, and that the Successful Vendor will be capable of continuing to provide these services during the term of the Contract;
- To ensure meaningful minority representation and a commitment to nondiscrimination, in accordance with the Act and applicable North Carolina laws;
- To provide for innovation and the ability to respond to changes in the industry and the demands of the marketplace;
- To obtain the highest quality advertising and related services at competitive prices; and
- To start up and operate the NCEL as one of the most successful lotteries in the world, while maintaining its security and integrity.

### 1.3 SUCCESSFUL VENDOR/NCEL RELATIONSHIP

The nature of this RFP and the Contract that will result from this Procurement will result in a relationship between the Successful Vendor and the NCEL, which relationship must be founded on mutual trust and respect. The Successful Vendor must adopt the same attitudes and concerns towards the NCEL’s games, financial performance, legal compliance, integrity, security and minority participation and commitment to nondiscrimination as are held by the NCEL.

### 1.4 GOVERNING LAW

All Proposals and the Contract are automatically subject to the requirements of, and must comply with, the Act and the regulations, policies and procedures of the NCEL as they may be adopted or amended from time to time (collectively, the “**Regulations, Policies and Procedures**”), regardless of whether or not specifically addressed in either this RFP or the Proposal. All potential Vendors must read and be familiar with the Act and the Regulations, Policies and Procedures of the NCEL, a copy of which may be obtained either from the NCEL or through a link on the NCEL’s official web site, [www.lottery.nc.gov](http://www.lottery.nc.gov) (the “**Website**”). The Regulations, Policies and Procedures are subject to change from time to time in the sole discretion of the Commission and the NCEL and no advance written notice of any such changes must be provided to any Vendor or other individual or entity. Unless otherwise indicated therein, any changes in the Regulations, Policies and Procedures are effective immediately upon the earlier to occur of their being adopted by the Director or Commission or their being posted on the Website. A Vendor may obtain the latest Regulations, Policies and Procedures at any time upon a written request to the NCEL. Thus, all Vendors are required to continually monitor and pay close attention to the Regulations, Policies and Procedures and all changes thereto. All Vendors shall automatically be

deemed to be on notice of, and subject to, the latest Regulations, Policies and Procedures of the NCEL. All Vendors are precluded from alleging that any particular Regulations, Policies and Procedures are not applicable to them because of their lack of knowledge of their existence or modification.

## **1.5 PROPOSAL SUBJECT TO PUBLIC RECORDS ACT AND OPEN MEETINGS ACT**

All Proposal data, materials and documentation originated, prepared and submitted to the NCEL pursuant to this RFP shall belong exclusively to the NCEL and may become available to the public in accordance with the North Carolina Public Records Act as provided in G.S. §132-1 et. seq. (the “**Open Records Laws**”); however, the NCEL will make reasonable attempts to maintain, in accordance with the Open Records Laws and other “Applicable Laws” (as defined in Section 3.14), the confidentiality of any trade secrets or confidential information that meets the requirements of G.S. §132-1.2 of the Open Records Laws (collectively, “**Confidential Information**”) identified by Vendors if such Vendors properly and conspicuously identify the particular data or other materials which are Confidential Information in accordance with the Open Record Laws and in writing by page, paragraph and sentence prior to or upon submission to the NCEL of Confidential Information to be protected. All markings of identification must be conspicuous; use color, bold, underlining or some other method in order to conspicuously mark and distinguish the Confidential Information from the other text. If a portion of a Proposal is improperly marked as Confidential Information or similar designation, the NCEL may, in its sole discretion, determine it non-responsive. Do not mark the entire page if only portions of a page are protected. Vendors should also state the reasons such confidentiality is necessary. However, under no circumstance will the NCEL be liable to any Vendor or to any other person or entity, for any disclosure of any such Confidential Information, including any trade secrets contained therein. The NCEL will not consider any Proposal which is declared, or a substantial portion of which is declared, by the Vendor submitting such Proposal to constitute Confidential Information. In addition, the NCEL may obtain the advice or opinion of the office of the Attorney General of North Carolina (the “**Attorney General**”) if any item marked as Confidential Information meets the statutory and other requirements under the Open Records Laws and other statutes, and any such determination of the Attorney General is binding on the Vendor and may be relied upon by the NCEL without liability. No Vendor shall have the authority to require any such determination from the Attorney General. The NCEL is not obligated to obtain such determination from the Attorney General, and instead the NCEL may make any such determination on its own in accordance with Applicable Laws.

## **1.6 MISUNDERSTANDING OR LACK OF INFORMATION**

By submitting a Proposal, Vendors covenant and agree that they fully understand and will abide by the terms and conditions of this RFP and all Regulations, Policies and Procedures and they will not make any claims for, nor have any rights to, cancellation, remedy or relief because of any misunderstanding or lack of information.

## **1.7 REJECTION OF PROPOSALS AND CANCELLATION OF RFP; REISSUE OF RFP**

Issuance of this RFP does not constitute a commitment on the part of the NCEL to award or execute a Contract. The NCEL retains the right, in its sole discretion, at any time to reject any or all Proposals, in whole or in part, and to cancel or cancel and reissue this RFP, before or after receipt and opening of Proposals in response thereto, or take any other actions, if it considers it to be in the best interests of the NCEL. Any Proposal that does not meet the requirements or specifications of this RFP may be considered to be non-responsive to this RFP and the Proposal may be rejected by the NCEL in its sole discretion. Any Proposal that restricts the rights of the NCEL or otherwise qualifies the Proposal may be considered to be non-responsive to this RFP and may be rejected in the sole discretion of the NCEL. The NCEL shall have the right, in its sole discretion, to reissue or not reissue an RFP and to negotiate a Contract or not negotiate a



Contract, all without any liability to any Vendor. Vendors submit Proposals at their own risk and with no expectation that a Contract will be awarded to them or at all.

#### **1.8. INCURRED EXPENSES**

The NCEL shall not, under any circumstance, be liable or responsible for any costs, expenses, reimbursements or fees incurred by a Vendor (or any other individual or entity) in preparing and submitting a Proposal or in performing any other action in connection with this Procurement, including, without limitation, any case studies, oral presentations, negotiations, questions and answers, procurements or other activities of any kind or nature.

#### **1.9. PROPOSAL VALIDITY**

All Proposals shall remain valid for one hundred and eighty (180) calendar days (the "**Proposal Offer Period**") from 4:00 p.m. Eastern Standard Time ("**EST**") January 27, 2006 (the "**Proposal Deadline**") and as provided in *Attachment A* to this RFP. A Proposal constitutes an offer by the Vendor to contract with the NCEL in accordance with the terms of the Proposal and this RFP, which offer is irrevocable for the duration of the Proposal Offer Period and may not be withdrawn or amended during the Proposal Offer Period without the written consent of the NCEL.

#### **1.10 RIGHT TO USE INFORMATION IN THE PROPOSAL**

Upon submission, all materials submitted to the NCEL by Vendors shall become the property of the NCEL and may be used as the NCEL deems appropriate.

### **PART II - PROPOSAL PROCESS**

Vendors are advised that all contents of this RFP, any amendments thereto, any "Answers" (defined in Section 2.4) prepared and published in accordance with this RFP by the NCEL to "Questions" (defined in Section 2.4) regarding this RFP and Procurement, the Successful Vendor's Proposal and the Contract, will constitute the substantive terms and conditions, among others, of the relationship, if any occurs, between a Successful Vendor and the NCEL, all as further described herein.

#### **2.1 CONTACT PERSON**

The sole point of contact (the "**Contact Person**") for inquiries and additional information concerning this RFP (**RFP # LC-000003**) and Procurement will be Sylvia Farrell, who can be reached as follows:

**Email:** [sylvia.farrell@ncmail.net](mailto:sylvia.farrell@ncmail.net)

**Fax:** 919-233-7069

**Re:** RFP # LC-000003

#### **DELIVERY ADDRESS:**

North Carolina Education Lottery (**RFP # LC-000003**)

Professional Advertising and Related Services RFP

111 Corning Road, Suite 250

Cary, NC 27511

#### **2.2 PROHIBITION AGAINST UNAUTHORIZED CONTACTS**

The NCEL is committed to a competitive procurement process that maintains the highest level of integrity, ethics and professionalism. Therefore, except as expressly contemplated in this RFP, or in connection with normal business activities not associated with this Procurement, no direct or

indirect contact or other solicitation initiated by Vendors, or any person employed by or on behalf of Vendors, including but not limited to their attorneys, representatives or others promoting their position, will be allowed with the Director, any Commission member (a **"Commissioner"**), any member of an evaluation committee created by the Director for this Procurement (the **"Evaluation Committee"**) or with any NCEL officer, employee, consultant or adviser, individually or otherwise, during the application and selection process associated with this RFP. All contact and other solicitations made by a Vendor submitting a Proposal, or any person or entity employed by or on behalf of such a Vendor shall be directed towards the Contact Person identified in Section 2.1 of this RFP. Any violation of this prohibition may result in the immediate disqualification of a Vendor and possible censure or other consequences in the sole discretion of the NCEL. Any attempt to intimidate or influence any NCEL employees, officers, consultants, advisors, Commissioners, the Director, or members of the Evaluation Committee with respect to this Procurement, whether such attempt is oral or written, formal or informal, successful or unsuccessful is strictly prohibited, will not be tolerated and will result in immediate, and possibly permanent, disqualification in the sole discretion of the NCEL. The NCEL takes its ethics, integrity and professionalism responsibilities extremely seriously and admonishes all Vendors to do the same or risk serious consequences!

### **2.3     HIRING OF NCEL PERSONNEL**

Vendors are expressly prohibited from officially or unofficially hiring, making any employment offer or proposing any similar consulting or business arrangement whatsoever with any NCEL employee, officer or Commissioner from the time this RFP is issued until the earlier of either: (i) one (1) year after the execution of any Contract; or (ii) the rejection of all Proposals received by the NCEL.

### **2.4     INQUIRIES**

All inquiries or concerns regarding this RFP must be submitted in the form of questions or requests for clarification (collectively, the **"Questions"**). Such Questions must be in writing and received by the Contact Person identified in Section 2.1 of this RFP on or before 4:00 p.m. EST on January 17, 2006 (the **"Question Deadline"**). Waiting until the submission of a Proposal or after the Question Deadline to raise any Questions may result in rejection of a Vendor's Proposal without recourse. The NCEL will not accept, review or respond to any Questions received after the Question Deadline. The NCEL's responses (the **"Answers"**) to Questions properly received prior to the Question Deadline will be posted on the NCEL's Website.

### **2.5     PROPOSAL SUBMISSION**

Proposals must be received by the Contact Person identified above in Section 2.1 of this RFP no later than the Proposal Deadline of 4:00 p.m. EST on January 27, 2006 in sealed containers. No exceptions will be made. A Vendor will submit a signed original and five (5) reproduced complete copies of its Proposal. The original Proposal must be signed in blue or black ink by the Vendor's authorized agent. All copies of the cost/price portion of the Proposal required by Part VI must be submitted in sealed and labeled envelopes separate from the information required by all other parts of this RFP. Proposals which fail to comply with the provisions of this RFP may, in the sole discretion of the NCEL, not be considered. Late Proposals will not be accepted. The NCEL reserves the right to refuse to accept any late Proposal even if the delay is occasioned by inclement weather or other events of force majeure, and thus Vendors should plan accordingly. Postmarks or receipt times by delivery service companies will not be considered in determining timeliness of a Proposal.

## **2.6 PROPOSAL FORMAT**

Each Vendor shall take steps to completely and totally familiarize itself with the requirements of this RFP and Procurement. Vendors must prepare and submit Proposals following the format of this RFP. Vendors must provide responses for all numbered items in Parts IV and V in which request or call for a response or information, and responses and signatures are required for any Attachments referenced within, or attached to, this RFP that are due with the Proposal.

A Proposal shall be prepared simply and economically to provide a straightforward and concise but complete delineation of the capabilities of a Vendor to satisfy the requirements set forth in this RFP, in accordance with the format prescribed in this RFP. Proposals that do not comply with this format may, in the sole discretion of the NCEL, be considered non-responsive and be rejected and not considered. Proposals shall be complete and must convey all of the information requested by the NCEL. The words "shall," "must," "will" and words of similar import denote material and essential requirements of this RFP. Failure to comply with any material and essential requirement may result in a rejection of a Proposal in the sole discretion of the NCEL.

## **2.7. MULTIPLE VENDORS AND JOINT PROPOSALS**

If the response submitted is a joint Proposal that includes multiple Vendors, it must define completely the roles, responsibilities, duties and obligations that each entity that is a part of a joint venture, strategic partnership or prime contractor team proposes to undertake, as well as the proposed responsibilities of each subcontractor of each entity. The Proposal must be signed by an authorized officer or agent of each entity. Also, the Proposal must designate a single authorized official from one of the entities to serve as the sole contact between the NCEL and the joint venture, strategic partnership or prime contractor team. Any Contract resulting from a joint Proposal must be signed by an authorized officer or agent of each entity. Any entity which is part of a joint venture, strategic partnership or prime contractor team included in the submission of a joint Proposal will be jointly and severally liable during the term of the Contract.

The Successful Vendor that submits a Proposal whereby any subcontractor will provide some portion of the specifications of this RFP shall retain ultimate responsibility for all design, implementation, operation, performance, maintenance and services provided by any subcontractor, and any claims or liabilities arising from or related to the subcontractor's performance. Furthermore, each subcontractor of a Successful Vendor must comply with all of the requirements contained in this RFP. A Vendor that submits a Proposal whereby any subcontractor will provide some portion of the specifications of this RFP must also provide the information described in Part IV – "Required Information" for each subcontractor providing twenty-five percent (25%) or more of the cost of the Contract.

## **2.8 CHANGES, MODIFICATIONS AND CANCELLATION**

The NCEL reserves the right, in its sole discretion, at any time prior to the Proposal Deadline of 4:00 p.m. EST January 27, 2006, to make changes to this RFP by issuance of written addendum(s) or amendment(s) or to cancel all or part of this RFP and Procurement. Any addendum(s), amendment(s) or cancellation(s) will be posted on the NCEL's Website.

## **2.9 MODIFICATION OR WITHDRAWAL OF PROPOSAL**

A submitted Proposal may be modified or withdrawn by written notice received by the Contact Person identified in Section 2.1 of this RFP at any time *prior* to the Proposal Deadline. After the Proposal Deadline, no Proposal may be modified or withdrawn.

A Vendor is under a continuing obligation to notify the NCEL following the submission of a Proposal of any changes to the Proposal information, data or facts submitted in response to Parts

IV and V and the Attachments to this RFP which could reasonably be expected to affect the NCEL's consideration of the Proposal. The NCEL reserves the right to request additional information or clarification on the contents of a Proposal in its sole discretion. However, unless requested by the NCEL, no Vendor is authorized or permitted to submit any additional information or further clarifications after the Proposal Deadline.

## **2.10 ADDITIONAL INFORMATION**

The NCEL reserves the right, and a Vendor by submitting a Proposal grants to the NCEL the right, to obtain any information the NCEL desires from any lawful source regarding the Vendor, its officers, directors, employees, owners, team members, partners, joint venturers and/or subcontractors, and its or their past business history, practices, contracts, abilities, performance, reputation or track record. All such information may be taken into consideration in evaluating the Proposals and no Vendor may complain or object to the obtaining or consideration of any such information. If a Vendor is concerned about any such negative publicly available information being considered by NCEL, it may provide any factual and lawful explanation of such information along with its Proposal. Failure to provide such explanations with its Proposal, which the NCEL can consider or not consider in its sole discretion, estops a Vendor from complaining about the consideration of any such information obtained by the NCEL.

## **2.11 PROPOSAL EVALUATION**

### **2.11.1 INTRODUCTION**

The deadlines stated in this RFP are critical. Time is of the essence. It is not the intent of the NCEL to disqualify any Proposal based on minor technicalities. However, the NCEL reserves the right to determine if a particular deficiency or inadequacy is significant enough to disqualify the Proposal and Vendor. It is the intent of the evaluation procedure established by the Director and Commission to determine whether each Proposal meets the needs of the NCEL, as outlined in this RFP, and then to determine which Proposal best suits those needs. A variety of factors shall be considered by the NCEL in determining the Successful Vendor it believes provides the best overall solution at a fair and reasonable price and consistent with the goals and objectives of the NCEL. No one factor can or will be so paramount that the most favorable bidder in that category automatically is the Successful Vendor. While price and total cost are both important factors, as is a price/value analysis, the Vendor's proposed marketing plan which should be designed to maximize net revenues for the Education Lottery Fund in the most professional and responsible manner with integrity is most critical. Thus, while Vendors are strongly encouraged to offer the lowest price and total cost and highest value possible, the Vendor offering the lowest price and total cost may not be selected as the Successful Vendor.

### **2.11.2 EVALUATION COMMITTEE**

The NCEL will conduct a fair, comprehensive and impartial evaluation of all Proposals deemed responsive and received in accordance with this RFP and Procurement using an Evaluation Committee selected by the Director. Legal counsel and consultants may provide such assistance to the Committee as is deemed necessary or helpful. Any attempt to intimidate or influence the Evaluation Committee (or their advisors) will be met with the most severe remedies and will include disqualification, in the sole discretion of the NCEL. For the period (the "**Blackout Period**") from the earlier to occur of the Proposal Deadline or the date the Evaluation Committee is publicly announced (if such public announcement occurs) until the date the Contract with the Successful Vendor is executed, no Vendor, nor any person or entity on behalf of a Vendor, should have any contact of any kind whatsoever with any member of the Evaluation Committee or the

Director, unless initiated or approved by the Director or Evaluation Committee (i.e., in connection with oral presentations of a Vendor, or in response to the Evaluation Committee's requests for information, or as a result of a required interaction with such Evaluation Committee member in the exercise of their job). Any contacts by Vendors with Evaluation Committee members must be professional, ethical and limited to the specific business purpose for which such contact was initiated by the Evaluation Committee member.

### **2.11.3 EVALUATION PROCEDURE**

The Evaluation Committee will review all responsive Proposals timely and properly submitted in accordance with this RFP. The Evaluation Committee may, in its sole discretion, request clarifications or answers to any questions it may have of a Vendor as a result of any information or representations contained in its Proposal or otherwise identified, and may ask a Vendor to address technical questions or seek additional information regarding any Proposal before completing the initial evaluation. The Evaluation Committee may require Vendors to make oral presentations to it as part of its evaluation process. Requests for clarification from Vendors, and any information received in response thereto, will be in, and will become part of, the evaluation record and the Contract if that Vendor is selected as the Successful Vendor. The Contract shall be awarded to the Vendor who submits a responsive Proposal as a result of this RFP and, in the opinion of the NCEL and its Commission, in its sole discretion (all of the following being collectively defined as the “**Optimal Selection Objectives**”):

- 1) as required by §18C-151(a)(8) of the Act, is the responsible lottery Vendor who submits the best Proposal that maximizes the benefits to the State of North Carolina;
- 2) is able, and is otherwise qualified in all material respects, to perform fully the Contract requirements without delay;
- 3) has the integrity, professionalism, reliability and experience to assure good faith and complete performance of the Contract;
- 4) successfully passes, to the satisfaction of the Commission, the background, business practices, ethical, reputation, criminal record, civil litigation, competence, integrity and regulatory compliance checks and investigations conducted by the Evaluation Committee, the NCEL, the Director or as required by the Act or other Applicable Laws, including, without limitation, G.S. §§18C-151(a) and (c);
- 5) whose Proposal as determined by the Commission, in its sole discretion:
  - a) conforms in all material respects to this RFP, the Procurement, the Act and other Applicable Laws;
  - b) represents the best value to the NCEL; and
  - c) offers what the Commission in its sole discretion believes can provide:
    - i) the greatest long-term benefit to the Education Lottery Fund and the State of North Carolina;
    - ii) the greatest integrity for the NCEL; and

- iii) the preferred advertising services and products for the NCEL and public taking into consideration the evaluation factors as deemed appropriate by the Evaluation Committee and Commission.

When the evaluation is completed, the Evaluation Committee will prepare a written recommendation to the Director of the NCEL, who may meet with the Evaluation Committee to ask questions regarding the recommendation or require further work in connection therewith. The Director may approve, disapprove, amend, modify, accept or reject the terms of the recommendation by the Evaluation Committee or require further work to be done. The Director shall then ultimately submit his final written recommendation to the Commission for the Commission's consideration. The Commission may approve, disapprove, amend, modify, accept or reject the terms of the recommendation by the Director or require further work to be done. Additionally, before the Contract may be awarded to and signed by a Vendor, the Director must obtain the Commission's approval of such Contract award. Following approval by the Commission of a Contract with a Successful Vendor, the NCEL shall post notice of the award of the Contract on the NCEL's Website, and such notice shall be communicated via facsimile to all Vendors who submitted a Proposal in response to this RFP and provided a facsimile number.

The NCEL shall promptly notify the Successful Vendor in writing of the Contract award and the Successful Vendor must commence work immediately following notification of the award, regardless of whether or not a Contract has been signed.

#### **2.11.4 EVALUATION CATEGORIES**

In evaluating the Proposals, the Evaluation Committee will be guided by various factors pertinent to the services sought as detailed in this RFP, and such factors shall include, but not necessarily be limited to, the following factors, which are not necessarily listed in the order of importance.

- Experience, including providing advertising services in connection with the start-up of a lottery;
- Integrity;
- Background;
- Financial viability and ability to perform the Contract as required and proposed;
- Personnel;
- Case Studies;
- Samples of work;
- Marketing Plan;
- Finalist Case Study;
- Finalist Presentation;

- Cost/price and value to the NCEL; and
- The extent to which the Vendor proposes to achieve or exceed the State of North Carolina's minority-owned business participation goals.

This RFP is intended to foster creative approaches to the implementation of the North Carolina Education Lottery in all respects. The RFP process will afford a Vendor the latitude to propose its best possible solution for the NCEL and will offer the NCEL a wide range of alternatives and allow it to consider all possible alternatives in determining the best solution for implementing and promoting the North Carolina Education Lottery.

The NCEL shall select a Vendor that it believes can best satisfy and achieve the Optimal Selection Objectives outlined in Section 2.11.3. Notwithstanding anything herein to the contrary, the Successful Vendor must, in the opinion of the Commission, also successfully pass, to the satisfaction of the Commission, the background, business practices, ethical, reputation, criminal record, civil litigation, competence, integrity, and regulatory compliance checks and investigations conducted by the Evaluation Committee, the NCEL, the Director or as required by the Act or other Applicable Laws, including, without limitation, G.S. §§18C-151(a) and (c).

## **2.11.5 SPECIFIC EVALUATION PROCESS**

### **A. Rating Categories and Steps:**

All Proposals submitted will be evaluated for form and content in accordance with the provisions of this RFP. The evaluation involves, at a minimum, a two-part process:

1. Rated Criteria Proposal: Proposals meeting the mandatory requirements of this RFP shall be evaluated and rated based on criteria described herein, including at least the following:
  - a) Vendor background, experience and capabilities;
  - b) Personnel;
  - c) Case studies; and
  - d) Samples of work.
2. Final Competition: The final step will consist of evaluation of the criteria outlined in RFP Section 2.11.5 C Final Competition, RFP Section 5.7 and elsewhere herein. The NCEL currently expects that a maximum of three (3) Vendors selected by it or its Evaluation Committee will be advanced to the Final Competition (the "**Finalist Vendors**"). The criteria to be evaluated in this step include:
  - a) Rated Criteria Proposal carryover;
  - b) Finalist case study and presentation; and
  - c) Cost Proposal.

### **B. Rated Criteria**

The criteria that have been currently defined for the purpose of evaluating Proposals are identified below:

### 1. Vendor Background, Experience and Capabilities

The information provided by the Vendors in Section 5.1 of this RFP (Vendor Background, Experience and Capabilities) will be used for evaluation of this portion. Vendors will be rated on the depth and breadth of their experience. Entertainment, lottery, and consumer goods experience will be given higher value than other types of unrelated experience. Vendors will be evaluated on:

- a) years in business;
- b) experience in entertainment, Lottery or consumer goods accounts;
- c) North Carolina – specific clients requiring spot broadcast media;
- d) types of media used;
- e) percent of radio and TV media placement; and
- f) full service capability.

### 2. Personnel

The information provided by the Vendors in Section 5.2 of this RFP (Account Personnel) will be used for evaluation of this portion. Less value will be given to those categories where staff is still to be determined. Vendors will be evaluated on:

- a) the number of staff assigned to the NCEL account;
- b) the percentage of time each staff in designated categories will be assigned to the NCEL account;
- c) total number of years experience in advertising;
- d) the educational background and advertising experience of assigned staff;
- e) the level and relevant experience of staff assigned to the NCEL account including size/complexity of each person's current client base;
- f) accounts with previous employers and level of responsibility;
- g) organization of staff in relation to reporting.

### 3. Case Studies

The information provided by the Vendors in Section 5.3 of this RFP (Case Studies) will be used for evaluation of this portion.

- a) The Campaign Development and Execution Case Study will be evaluated on:
  - i) ability to establish strategic priorities;
  - ii) advertising/media objectives met;
  - iii) creative execution on strategy;
  - iv) whether the execution addressed the designated audience;



- v) whether the media plan was on strategy, addressed the designated audience, and the media supported one another;
  - vi) positive impact on brand image and awareness based on evaluation of campaign results; and
  - vii) significant response to sales/trial.
- b) The Product Image Case Study will be evaluated on:
- i) whether the creative strategy met the advertising objective;
  - ii) whether the execution achieved the stated strategy, was innovative, memorable and/or intrusive;
  - iii) whether the media strategy met the advertising objective;
  - iv) whether innovative media strategies were presented;
  - v) if the media supported and built upon one another and the media and message interacted well; and
  - vi) whether the degree of progress towards achieving the Vendor's stated objectives was evaluated and what was learned from it.

#### 4. Samples of Work

The information provided by the Vendors in Section 5.4 of this RFP (Samples of Work) will be used for evaluation of this portion. Vendors will be evaluated on:

- a) whether the creative answered the marketing objective and followed the intended creative strategy;
- b) whether the sample is innovate, persuasive, breakthrough and/or intrusive;
- c) music sound quality, choice of talent, film direction and production, and design quality; and
- d) number of campaigns done by creative staff assigned to the NCEL account.

### **C. Final Competition**

Only the Finalist Vendors with the top three (3) evaluated Proposals from Section B, Rated Criteria will be advanced to the Final Competition. This Section will be evaluated at least on the following:

#### 1. Written Proposal Carryover

The overall evaluation of each Finalist Vendor from Section A.1 (Rated Criteria Proposal) and Section B (Rated Criteria) will be carried over to the Final Competition

#### 2. Finalist Case Study and Presentation

- a) Notice to Finalist Vendors inviting them to participate in the Final Competition and Oral Presentations will be provided by the NCEL.
- b) An oral presentation as described herein will be required as part of the Final Competition. The Finalist Vendor's Account Supervisor/Executive, Creative Director and Media Planner for the NCEL account must be key presenters. The presentation may be a maximum of one (1) hour in length and will take place at the NCEL Headquarters in Cary, North Carolina. The presentation should begin with a brief (no longer than ten (10) minutes) description and background of the Vendor. A

written overview of the oral presentation must also be submitted. This overview must not exceed eight (8) pages, excluding visual representations.

- c) Each Finalist Vendor will be asked to develop an advertising plan and media plan for the launch of the NCEL. Due to time constraints, it is not required that the advertising and media plan be specific with execution details, but rather consist of an overall marketing summary and strategy for the launch. The Successful Vendor will implement their plan, as may be amended, modified, replaced or superseded by the NCEL in its sole discretion, and the launch date is currently scheduled for April 5, 2006.
- d) The NCEL is not requesting logo designs for the NCEL as part of the RFP. However, the Successful Vendor will be asked to design the NCEL logo within three (3) days of the award of the Contract.

### 3. Overview for Finalist Case Study

The NCEL was created to maximize net lottery proceeds in order to fund various state educational programs. Anticipated sales for the first full fiscal year are One Billion Two Hundred Million Dollars (\$1,200,000,000).

The first lottery tickets are tentatively scheduled to go on sale April 5, 2006 and are currently anticipated to consist of four (4) instant (scratch) ticket games. These four (4) games are currently anticipated to consist of: (a) two (2), One Dollar (\$1.00) ticket games; (b) one (1), Two Dollar (\$2.00) ticket game; and (c) one (1), Five Dollar (\$5.00) ticket game.

Instant games are typically well received by players because they are easy to play and offer variety in play style and design. Most lottery states offer instant games and this game mix is easily demonstrated. Education is needed to insure players understand how to play the games.

The first currently anticipated online game, Powerball, is tentatively scheduled to start June 14, 2006.

The NCEL's retailer base as of the startup deadline is currently expected to be approximately five thousand (5,000). Marketing support is necessary for their success in selling the NCEL games.

NCEL advertising must be tastefully designed and presented in a manner to minimize the appeal of NCEL games to minors. The use of cartoon characters or of false, misleading, or deceptive information in NCEL advertising is prohibited. All advertising promoting the sale of NCEL tickets or shares for a particular game must include the actual or estimated overall odds of winning the game and any other items required by the Act. Specifically, in addition:

- All advertising shall include resources for responsible gaming information.
- No advertising may intentionally target specific groups or economic classes.
- No advertising may be misleading, deceptive, or present any NCEL game as a means of relieving any person's financial or personal difficulties.
- No advertising may have the primary purpose of inducing persons to participate in the NCEL.

Furthermore, to the extent reasonably possible, every effort should be made to comply with the advertising guidelines as established by the North American Association of State and Provincial Lotteries (NASPL) Advertising Guidelines (see attached Exhibit B).

4. Assignment

Develop a thirteen (13)-week (approximate timeline April 5, 2006 through June 30, 2006) general market advertising plan for the launch of the NCEL, along with the introduction of its first four (4) instant games and tentative start of Powerball. The approximate total advertising budget for fiscal year 2006 is currently anticipated to be One Million Nine Hundred Thousand Dollars (\$1,900,000).

5. Marketing Objective:

The NCEL integrated communications objective is to provide effective statewide general market advertising for the launch of the new brand for the NCEL, which is consistent with the dignity and integrity of the State of North Carolina for the promotion of the NCEL games and initiatives, in order to raise funds for public education.

6. Advertising Objectives:

The advertising objectives include, without limitation:

- Meet or exceed the NCEL retail sales and revenue goals by providing players with a clear, efficient presentation of the current game menu and by introducing new games as part of the overall fun and excitement of playing NCEL games;
- Maximize contributions to the education programs receiving funding from the NCEL;
- Create and foster a positive public image for the brand by reinforcing the NCEL's mission to raise revenue for education;
- Increase statewide awareness of the NCEL brand and products among potential players; and
- Educate consumers on how to play NCEL games.
  - a) The advertising plan should include, without limitation, at least and will be evaluated on:
    - i) overall marketing objective;
    - ii) key facts from market research and/or other analysis considered during the development of the strategies and campaigns;
    - iii) problems and opportunities considered during the development of the strategies and campaigns, including long-term versus short-term implications;
    - iv) the advertising objective and strategies and how these were defined;
    - v) creative positioning/strategy development process and rationale;

- vi) creative presentation (only storyboard, slides, scripts or rough cuts for radio accepted); and
  - vii) key creative, account, planning/research and media personnel responsible for the development of the strategies and campaigns who will work on the NCEL account.
- b) The media summary plan should include, without limitation, at least, and will be evaluated on:
- i) Media objectives, considerations and strategies;
  - ii) Media selection, weight levels and timing;
  - iii) Proposed media merchandising strategies; and
  - iv) The rationale for the above recommendations.

## 7. Cost Proposal

Every Vendor (not just the Finalist Vendors) shall prepare and submit a cost bid as described in Part VI of this RFP. The Vendor shall be compensated solely via the fixed percentage fee agreed upon by the NCEL. All services required by this RFP must be included in the fee, including, without limitation:

- a) Assist in overall marketing analysis, strategy and position of the NCEL and its products;
- b) Development of general market media plans and post-buy analysis of all media buys;
- c) Provide input for planning, coordinating and executing specific portions of the NCEL annual advertising plan;
- d) Work and interact with NCEL marketing staff, and any other marketing vendors to provide integration of advertising plans;
- e) As authorized, develop specific plans to maximize the awareness of the NCEL and its games and recommend budgetary savings where appropriate;
- f) In conjunction with NCEL, develop an advertising and marketing research plan;
- g) Monitor on behalf of the NCEL the performance of all media suppliers to ensure that all services purchased are delivered;
- h) Conduct meetings and follow up on assignments, providing attention to detail and clear focus on critical issues;
- i) Coordinate, submit and be responsible at functions, including associated entry fees up to Ten Thousand Dollars (\$10,000) per year, for award recognition designated by the NCEL; provided that the NCEL shall retain any awards, trophies, plaques, etc. that may be awarded for creative work that was created and produced by the Vendor for the NCEL;

- j) Provide all costs associated for any Vendor personnel to attend any NCEL-related activities, including but not limited to conferences, sales meetings and retailer visits;
- k) Provide for management and traffic of production development, media placement, and timelines and any required reports, including, but not limited to, monthly County-by-County Advertising/Sales Evaluation and Monthly Projects in Progress;
- l) As authorized, implement and satisfy all requirements of the creative and media plans, including the following:
  - i) Creation and production of all advertising materials for print, broadcast, point-of-sale and other media, with a minimum of three creative executions per campaign;
  - ii) Prepare and evaluate competitive bids for productions and media, prepare and submit estimates and invoices to the NCEL for all work performed under the Contract, and reconcile the advertising budget with the NCEL monthly and quarterly;
  - iii) Verify the publication of all requested media according to contracts and placement instructions; and
  - iv) Evaluate performance of broadcast schedules as compared with ratings and estimates.

## 2.12 DISPUTE PROCEDURE

All claims and disputes, including but not limited to protests related to this RFP, the Procurement and the award of the Contract to the Successful Vendor shall be handled solely and exclusively under and in accordance with the North Carolina Education Lottery Dispute Resolution Procedures (the “**Dispute Procedures**”), as adopted and/or amended from time to time by the Commission in accordance with the authority granted to it in the Act. The Dispute Procedures are automatically considered to be a part of the Regulations, Policies and Procedures of the NCEL. All Vendors should read and be familiar with the Dispute Procedures which are available through a link on the NCEL’s Website. The Dispute Procedures include provisions governing the deadline for the filing of a Dispute Resolution Request. Any Vendor that submits a Proposal hereby expressly acknowledges and agrees that: (a) the Dispute Procedures represent the exclusive procedure and the exclusive forum for binding resolution of all claims, disputes, complaints and Dispute Resolution Requests of any kind relating in any way to any RFP, Procurement, Contract, bid, offer, quote, proposal or agreement entered into by the NCEL; (b) it is estopped from objecting to any court, agency or other entity as to the Dispute Procedures being such sole and exclusive forum for binding resolution; and (c) it agrees to be completely, solely and irrevocably bound by such Dispute Procedures. In addition, each Vendor submitting a Proposal irrevocably waives any claim they might have had to protest or object to this RFP or its contents.

## 2.13 SUMMARY OF KEY DATES

The NCEL reserves the right to change any dates and schedule contained in this RFP, including those shown below. If changes are made, the changes will be communicated in accordance with Section 2.8.

<b>January 11, 2006</b>	RFP Issuance Date
<b>January 17, 2006</b>	Questions Deadline 4:00 p.m. EST
<b>January 23, 2006</b>	Answers to Written Questions Posted on the Website
<b>January 27, 2006</b>	Deadline for submission of Proposals 4:00 p.m. EST

**DELIVERY ADDRESS:**

North Carolina Education Lottery Commission  
Professional Advertising and Related Services Bid  
111 Corning Road, Suite 250  
Cary, NC 27511

<b>February 1, 2006</b>	Announce Finalists
<b>February 9, 2006</b>	Oral Presentations
<b>February 13, 2006</b>	Target date for Commission Decision of Successful Vendor and Contract Execution

The cost/price portion of a Proposal deemed to be responsive to this RFP shall not be opened until after the evaluation of the technical component is completed by the Evaluation Committee.

**2.14 INTENT TO BID LETTER**

For this Procurement, there is no requirement to submit an Intent To Bid Letter to the NCEL.

**2.15 PROPOSAL CONSTITUTES OFFER**

By submitting a Proposal, a Vendor agrees to be governed by the terms and conditions set forth in this RFP, and any amendments thereto, and further agrees that the Contract will incorporate the terms and conditions of this RFP and any amendments hereto and the Questions and Answers, the Vendor's Proposal and any terms and conditions subsequently negotiated with such Vendor. A Vendor submitting a Proposal must complete and submit, as part of its Proposal, the Vendor Certification Form included as *Attachment A*, and made a part hereof. All Proposals shall remain valid for one hundred and eighty (180) calendar days from the Proposal Deadline (the Proposal Offer Period). A Proposal constitutes an offer by the Vendor to contract with the NCEL in accordance with the terms of the Proposal, which offer is irrevocable for the duration of the Proposal Offer Period, and may not be withdrawn or amended during the Proposal Offer Period without the written consent of the NCEL.

**2.16 NEGOTIATION AND EXECUTION OF CONTRACT**

A Successful Vendor under this RFP shall negotiate and execute a Contract containing such terms and conditions as shall be satisfactory to, and required by, the NCEL in the sole discretion of the NCEL and its legal counsel, including the Attorney General. Initially, the NCEL may, in its sole discretion, negotiate only with the Vendor whose Proposal is the highest rated Proposal (the "**Apparent Successful Bidder**"), or it may, in its sole discretion, negotiate with several Vendors simultaneously or in seriatim. The occurrence of negotiations with any Vendor(s) conveys no right or status on such Vendor(s). In the event that negotiations with the Vendor that submitted the highest rated Proposal fail to result in a Contract, or if for any other reason a Contract with such Vendor is not executed, the NCEL is not obligated to negotiate a Contract with such Vendor and it may instead conduct negotiations with other Vendors until a Contract is successfully executed. By

submitting a Proposal, each Vendor acknowledges and agrees that the NCEL may negotiate with one or more Vendors, under such circumstances, at such times and in such a manner as it determines to be in the best interests of the NCEL, and no Vendor may object to the fact that the NCEL has not negotiated with it but may have negotiated with one or more other Vendors.

## **2.17 NONEXCLUSIVE RIGHTS**

Nothing in this RFP or any Contract resulting from this RFP shall preclude the NCEL from purchasing other advertising, public relations, creative services or related services for its use from other vendors, individuals or entities as the NCEL, in its sole discretion, shall determine.

## **PART III – CONTRACTUAL TERMS AND CONDITIONS**

### **3.1 GOVERNING LAW**

The procurement process, the award procedure, and any Contract resulting from this RFP shall be governed by and construed in accordance with the laws of the State of North Carolina, including the Act. Any and all claims or disputes arising under or in connection with this RFP or the Contract shall be exclusively governed by the Dispute Procedures, as they may be adopted or amended from time to time by the Commission.

### **3.2 CONTRACT ELEMENTS**

The Contract will follow the general format specified by the NCEL in this RFP. The terms of this RFP, as may be amended by the NCEL from time to time, and the Proposal of the Successful Vendor will be incorporated into and form a part of the Contract, as will the Questions and Answers. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the Contract, this RFP and any amendments thereto as well as Answers to the Questions, Proposal of the Successful Vendor, all of which must comply with the Act.

The currently proposed draft Contract is attached to this RFP as *Exhibit A* (the “**Proposed Contract**”). This Proposed Contract shall be the Contract executed by the Successful Vendor, subject only to: (a) any changes thereto made by the NCEL (which if made prior to the Proposal Deadline will be noticed in accordance with Section 2.8, and which in any event shall automatically become incorporated as a part of the Proposed Contract); and (b) any other changes proposed by the Successful Vendor and agreed to by the NCEL, in the NCEL’s sole discretion. If a Vendor has any changes it desires to make to the Proposed Contract, it must provide the exact wording of such changes and a redlined revised version of the Proposed Contract for the NCEL’s consideration as a part of the Vendor’s Proposal. Failure to provide any such suggested specific changes and redlined revised Proposed Contract along with its Proposal shall estop the Vendor from further negotiating the Contract if it is selected as the Successful Vendor, and in such case the Proposed Contract as prepared by the NCEL shall be the Contract that the Successful Vendor is required to execute. Merely because a Vendor has offered suggested changes to the Proposed Contract along with its Proposal does not bind the NCEL nor does it require the NCEL to accept any such suggestions or changes in whole or in part. The NCEL reserves the right to insist that all or any portion of the Proposed Contract be executed as presented by the NCEL.

### **3.3 AMENDMENTS**

The Contract may be amended only by the signed written agreement of each party thereto.

### **3.4 SUCCESSORS AND ASSIGNS**

Subject to the limitations on assignment contained herein, the Contract shall be binding on and inure to the benefit of the Successful Vendor, its subcontractors, successors and permitted assigns.

### **3.5 SUBCONTRACTING; ASSIGNMENT**

The Successful Vendor is prohibited from subletting, conveying, assigning or otherwise disposing of the Contract, its rights, duties, obligations, title, or interest therein, or its power to execute the Contract to any person or entity without the prior written approval of the NCEL in its sole discretion. If any portion of the Contract is to be subcontracted to a third party, the NCEL must approve same in advance and in writing and such third party must comply with the requirements of the Act, the NCEL, the Contract, this RFP and any amendments thereto and any other Applicable Law.

### **3.6 BACKGROUND INVESTIGATIONS**

The NCEL shall conduct background and other investigations, as required by the Act and Applicable Law, as it deems appropriate and as may be outlined in Section 4.5 of this RFP, of the Successful Vendor and its officers, directors, principals, shareholders, investors, owners, subcontractors, employees or other associates, parent companies, subsidiaries and affiliates.

### **3.7 COMPLIANCE**

The Successful Vendor shall comply with all applicable rules, procedures and regulations as adopted and/or amended from time to time by the NCEL under the Act, including but not limited to the Regulations, Policies and Procedures of the NCEL established by the Commission, and all other applicable federal, state and local laws, rules and regulations.

### **3.8 TERM OF CONTRACT**

The initial term of the Contract shall be for a period of three (3) years from the effective date thereof (the **"Initial Term"**). The Contract shall be automatically renewed for a period of one (1) year (each a **"Renewal Term"**) upon the completion of the immediately preceding Initial Term or Renewal Term, as the case may be, for a total of no more than three (3) Renewal Terms, unless the NCEL sends the Successful Vendor, at least thirty (30) days prior to the end of the then-current Initial Term or Renewal Term, written notice that it intends to terminate the Contract at the end of the then-current Initial Term or Renewal Term. The NCEL's renewal of the Contract shall be contingent upon, among other things, availability of funds for advertising services and satisfactory performance by the Successful Vendor under the Contract.

### **3.9 DESIRED COMPENSATION FOR RENDERING PROPOSED SERVICES**

Each Proposal must include a precise statement of the Vendor's proposed compensation for undertaking and completing all phases of the services requested and outlined in this RFP as called for in Part VI of this RFP. The NCEL shall compensate the Successful Vendor by payment of a fixed percentage fee calculated as a percentage of the total annual fiscal year advertising budget handled by the Successful Vendor (the **"Vendor's Fee"**); provided that advertising expenditures shall not exceed one percent (1%) of the total annual revenues of the NCEL. The NCEL currently anticipates that the annual advertising budget that will be available to the Successful Vendor for advertising and related services will be approximately Eight Million Dollars (\$8,000,000) for the first full fiscal year. The NCEL currently anticipates sales to be approximately One Billion, Two Hundred Million Dollars (\$1,200,000,000) for the first full fiscal year the NCEL is in operation. The Vendor's Fee will serve as the Vendor's sole source of compensation from the



NCEL. The Vendor will not collect any additional commission on media purchases and any such media purchases will be billed on a net basis. In addition, the Vendor's Fee will include all expenses to be incurred by the Vendor in performing all services required by this RFP or the Contract.

### **3.10 OWNERSHIP OF MATERIALS AND RIGHTS OF USE**

Neither the Successful Vendor nor any of its approved subcontractors, sub-vendors, employees, joint venturers, partners or other parties working with or for the Successful Vendor in performing services under the Contract or for the NCEL (all of the foregoing being defined as the "**Subcontractors**") shall have any proprietary rights or interests in the software, hardware, patents, copyrights, equipment, firmware, mask works, trademarks (and the goodwill associated therewith) and service marks (and the goodwill associated therewith), products, materials, intellectual properties developed, data, documentation, approaches, systems, programs, methodologies, or concepts developed, produced or provided in connection with the services provided exclusively for the NCEL under the Contract (collectively, the "**NCEL Intellectual Properties**"). All such NCEL Intellectual Properties, including all intellectual property rights therein, shall belong exclusively to the NCEL, and shall, to the greatest extent possible be deemed to be "works made for hire" for the NCEL.

The NCEL grants to the Successful Vendor during the period from the effective date of the Contract until the Contract expires or is otherwise terminated a non-exclusive license to use, sublicense, modify and create derivative works of such of the NCEL Intellectual Properties which are owned by the NCEL and created solely by the Successful Vendor or its Subcontractors, provided such use by the Vendor or its Subcontractors is only for the benefit of the NCEL and solely for the purpose of performing the Contract.

All deliverables, written materials, campaigns, designs, tangible or intangible materials, intellectual or other property or other work product of any kind or nature produced, revised, created, modified or prepared by the Successful Vendor and any of its Subcontractors in connection with the Contract, this RFP or Procurement or for the NCEL (collectively, the "**Work Product**") will be deemed, to the greatest extent possible, "work made for hire" under Section 101 of the United States Copyright Act, 17 U.S.C. Section 101 to be exclusively owned by the NCEL. To the extent that any Work Product does not qualify as a "work made for hire," the Successful Vendor and each of the Subcontractors hereby irrevocably transfer, assign and convey to the NCEL all right, title and interest in the Work Product, together with all copyrights, patents, trade secrets, confidential information, trademarks (and the goodwill associated therewith) and service marks (and the goodwill associated therewith) rights (all of the foregoing being collectively defined as the "**Intellectual Property Rights**"), free and clear of any liens, security interests, hypothecations, pledges, claims or other encumbrances of any kind or nature, to the fullest extent permitted by law. At the NCEL's request, the Successful Vendor and its Subcontractors shall execute, and shall cause its or their personnel to execute, all assignments, applications, writings, instruments or other documentation of any kind or nature deemed necessary or beneficial by the NCEL so that the NCEL may perfect or protect its rights as provided herein. The Successful Vendor and its Subcontractors shall require its and their employees, and permitted agents, independent contractors and consultants to execute agreements assigning all of their rights in the Work Products, and all Intellectual Property Rights therein, to the NCEL, directly or indirectly, and shall provide the NCEL with documentation evidencing its compliance with this requirement upon the NCEL's request. The intent of the NCEL is that the NCEL is the sole owner of, and is able to continue to use any or all of, the Work Product that it chooses in the conduct of its the lottery games and other activities.

### **3.11 PATENTS, COPYRIGHTS, TRADEMARKS, TRADE SECRETS AND OTHER INTELLECTUAL PROPERTY**

The Successful Vendor represents and warrants that its performance under the Contract and all Work Product does not and will not infringe any patent, copyright, trademark, service mark or other intellectual property rights of any other person or entity, and that it and they will not constitute the unauthorized use or disclosure of any trade secret of any other person or entity.

### **3.12 TRADEMARK AND SERVICE MARK SEARCH AND REGISTRATION**

The Successful Vendor, at its sole expense, will conduct trademark and service mark searches for concepts used during the term of the Contract. Copies of all such search reports will be delivered to the NCEL and its legal counsel. New trademarks and service marks developed for the NCEL will be registered by legal counsel chosen by the NCEL solely in the name of the NCEL for its sole use.

### **3.13 INTELLECTUAL PROPERTY INDEMNIFICATION**

The Successful Vendor shall indemnify and hold harmless the NCEL, its officers, Commissioners, directors, agents, retailers and employees and the State of North Carolina from and against any and all suits, damages, expenses, losses, liabilities, claims of any kind, costs or expenses of any nature or kind, including, without limitation, court costs, attorneys' fees and other damages, arising out of, in connection with or resulting from the development, possession, license, modification, disclosure or use of any Work Product, copyrighted or non-copyrighted materials, trademark, service mark, patent, trade secret, confidential information, secure process, invention, process or idea (whether patented or not), article or appliance furnished or used in the performance of the Contract.

### **3.14 WARRANTIES**

The Successful Vendor warrants that it currently is, and will at all times during the term of the Contract remain, lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and that it currently is, and will at all times remain in full compliance with all legal requirements, laws, statutes, rules, regulations and orders of any court, agency or entity that has jurisdiction over it, including, without limitation, the Act and all applicable laws of its domicile, the State of North Carolina and the United States of America (all of the foregoing being collectively defined as, the "**Applicable Laws**").

The Successful Vendor represents, warrants and agrees that all services rendered pursuant to this RFP, its Proposal and the Contract have been and shall be prepared or done in a workman-like manner consistent with the highest standards of the industry in which the services are normally performed.

### **3.15 TERMINATION FOR BREACH**

The NCEL may terminate the Contract: (a) if certain material breaches are not cured within seventy-two (72) hours; and (b) if any other breaches are not cured within thirty (30) days of notice (all as more particularly described in the draft Contract attached hereto as *Exhibit A*).

### **3.16 BOOKS AND RECORDS**

The Successful Vendor shall maintain its books, records and other evidence pertaining to the Contract in accordance with the Act, good business practices, United States generally accepted accounting principles (or other applicable accounting principles or policies) and Applicable Laws records retention requirements.

### **3.17 AUDIT REQUIREMENTS**

The Successful Vendor shall maintain all documentation and records as required by the Act and other applicable North Carolina laws. The books, documents, papers, accounting records and other evidence pertaining to products and/or services to be provided or performed or money received under the Contract shall be maintained in accordance with all requirements of the Act and all other Applicable Laws and for a period of not less than five (5) full years from the date of the final payment and shall be subject to audit or inspection at any reasonable time and upon reasonable notice by the NCEL, or its duly appointed representatives, including, without limitation, the NCEL's auditors, the Office of the State Controller, the North Carolina State Auditor or any other appropriate representative of North Carolina state government. The Successful Vendor shall make such materials available at its offices, and copies thereof shall be furnished to the NCEL or its duly appointed representative by the Successful Vendor, at no cost to the NCEL or its duly appointed representative, if requested by the NCEL or its duly appointed representative. Such records shall be maintained in accordance with the Act and any applicable provisions of United States generally accepted accounting principles (or other applicable accounting principles or policies) and any other applicable procedures established by the NCEL from time to time. A copy of the annual financial statements of the Successful Vendor, with an independent audit opinion expressed without reservation or qualification, shall be provided to the NCEL within six (6) months of the fiscal year end. The NCEL and its auditor, the North Carolina State Auditor, the Office of the State Controller and any other appropriate representative of the State of North Carolina shall have the right to audit the records and operations of the Successful Vendor as relates to the NCEL and the services provided by the Vendor. Specifically, without limitation, the Successful Vendor shall comply with the requirements of G.S. §18C-122 regarding independent audits.

### **3.18 INDEMNIFICATION**

The Successful Vendor shall indemnify and hold harmless the NCEL, its officers, Commissioners, directors, agents, employees and retailers, and the State of North Carolina from and against any and all suits, damages, expenses, losses, liabilities, claims of any kind, costs or expenses, including court costs and attorneys fees, which may be incurred, suffered, or required, in whole or in part, by an actual or alleged act or omission of the Successful Vendor, or a subcontractor or joint venturer of the Successful Vendor, or any person directly or indirectly employed by the Successful Vendor or a subcontractor of the Successful Vendor whether the claim, liability, loss, damage, cost or expense is based on negligence, strict liability or any other action or omission.

### **3.19 BONDS AND INSURANCE**

All required bonds and insurance as provided under the Act or other Applicable Laws must be issued by companies or financial institutions which are financially rated "A" or better (or equivalent ratings) by a nationally recognized rating agency and are duly licensed, admitted and authorized to transact business in the State of North Carolina.

### **3.20 BID BOND, RECORD CHECK FEE, PAYMENT BOND AND PERFORMANCE BOND**

Contemporaneously with the delivery of a Proposal, EACH Vendor must submit to the NCEL:

- a) a performance bond or letter of credit from a bank or credit provider acceptable to the NCEL (the "**Bid Bond**") in the amount of One Hundred Fifty Thousand Dollars (\$150,000); provided that the Bid Bond provided by the Successful Vendor pursuant to this clause shall be replaced by the Performance Bond (as defined below), after the selection of the Successful Vendor and after the expiration of all applicable protest periods;

- b) a check or other similar financial instrument of immediately available funds (the **"Record Check Fee"**) to cover the cost of criminal record check conducted under G.S. §114-19-6 pursuant to §18C-151(a)(3) of the Act; and
- c) a payment bond or letter of credit from a bank or credit provider acceptable to the NCEL (the **"Payment Bond"**) the NCEL in the amount of Five Hundred Thousand Dollars (\$500,000) (the "Security Instrument").

In addition, contemporaneously with the execution of the Contract, the Successful Vendor shall provide a performance bond or letter of credit from a bank or credit provider acceptable to the NCEL (the **"Performance Bond"**) in the amount of not less than Five Hundred Thousand Dollars (\$500,000). The amount of the Performance Bond may be reduced after the third (3<sup>rd</sup>) year of the Contract term, in the sole discretion of the NCEL.

The Record Check Fee to cover the cost of the criminal record check that must be submitted by EACH Vendor with their Proposal shall be in the amount equal to the sum of:

- i) Two Thousand Dollars (\$2,000) (the **"Corporate Search Fee"**) for the Vendor; plus
- ii) the Corporate Search Fee for any parent corporation of the Vendor; plus
- iii) the Corporate Search Fee for any subsidiary of the Vendor that is bidding in connection with the Vendor on the Procurement described in this RFP; plus
- iv) the Corporate Search Fee for each joint venture partner or subcontractor who will be paid twenty-five percent (25%) or more of the Proposed Contract amount and who is bidding with the Vendor on the Procurement described in this RFP; plus
- v) Two Hundred Dollars (\$200) (the **"Individual Search Fee"**) for each officer and director of the Vendor and for each shareholder of the Vendor who owns an interest of five percent (5%) or more in the Vendor.

The NCEL currently anticipates that it will only conduct all of the required criminal record and similar checks for the three (3) Vendors selected as Finalist Vendors. To the extent such record checks do not need to be conducted for all Vendors who submit Proposals, then for any such Vendor who submits a Proposal and is not selected by the NCEL as a Finalist Vendor, after the execution of the Contract with the Successful Vendor, the NCEL shall refund any portion of their Record Check Fee which has not been previously used to all such Vendors not selected as Finalist Vendors.

The Payment Bond must indicate that the NCEL may draw upon the Payment Bond in the case of misappropriation or nonpayment of funds by the Successful Vendor, such as in the event that the Successful Vendor were to have received payment from the NCEL for sub-vendor, Subcontractors or other services and had not paid said sub-vendor, Subcontractors or other party within a period of fifteen (15) days after the Successful Vendor's receipt of payment from the NCEL. Upon at least ten (10) days prior written notice to the Successful Vendor, the NCEL may draw on the Payment Bond to pay Subcontractors, sub-vendors or others.

### **3.21 INSURANCE**

The Successful Vendor shall be required to maintain at least the following types and amounts of insurance during the term of the Contract from reputable and solvent carriers reasonably acceptable to the NCEL:

- General liability insurance in the amount of at least \$1,000,000;
- Such other types and amounts of insurance as the NCEL shall from time to time reasonably require;
- Workers Compensation Insurance at or above levels required by the State of North Carolina; and
- An advertising agency liability insurance policy which shall insure against any and all claims against the NCEL based on libel, slander, piracy, plagiarism, invasion of privacy or infringement of copyright, trademark, service mark, logo, idea or tangible or intangible property arising out of any Work Product, other product or service prepared by the Vendor or its Subcontractors, notwithstanding the fact that any such material may have been approved by the NCEL, in the amount of at least Five Hundred Thousand Dollars (\$500,000) per incident and One Million Dollars (\$1,000,000) in the aggregate. Such insurance policy shall name the NCEL as an additional insured, and shall provide that such policy cannot be terminated, canceled, or modified without giving the Vendor and the NCEL written notice at least ten (10) days prior to the effective date of any termination, cancellation or modification.

The Successful Vendor shall provide the NCEL with certificates of insurance within ten (10) days after the Contract date and evidence of any renewed bonds or insurance policies within five (5) days prior to the expiration of then existing bonds or insurance policies during the term of the Contract.

### **3.22 FORCE MAJEURE/DELAY OF PERFORMANCE**

In the event that either party to the Contract is unable to perform any of its obligations under the Contract, or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies, or other events of force majeure not the fault of the affected party, the affected party shall immediately give notice to the other party and shall use its best efforts to resume performance. Upon receipt of such notice, each party's obligations under the Contract shall be immediately suspended. Any such causes of delay or failure shall, in the exercise of reasonable diligence, extend the period of performance, for a reasonable period, until after such causes of delay or failure have been removed. However, if delays resulting from any foregoing causes extends for more than thirty (30) days and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment for price, then either party, upon written notice may terminate the Contract and in due course collect monies properly due up to and including the date of such termination.

### **3.23 TAXES, FEES AND ASSESSMENTS**

The NCEL shall have no responsibility whatsoever for the payment of any federal, state or local taxes which become payable by the Successful Vendor or its subcontractors, joint venturers, agents, officers or employees. The Successful Vendor shall pay and discharge all such taxes when due.

### **3.24 NEWS RELEASE**

The Successful Vendor shall not issue any news releases or participate in any media interview pertaining to this RFP, Procurement or the Contract without the express prior written consent of the NCEL in each instance, and then only in cooperation with the NCEL.

### **3.25 ADVERTISING**

The Successful Vendor agrees not to use the NCEL's names, trademarks, service marks, logos, images, or any data arising or resulting from this RFP or the Contract as a part of any commercial advertising or proposal without the express prior written consent of the NCEL in each instance.

### **3.26 CODE OF CONDUCT FOR SUCCESSFUL VENDOR**

The NCEL is an extremely sensitive enterprise because of the nature of the lottery industry and its status as a State Agency of the State of North Carolina. Therefore, it is essential that its operation, and the operation of other enterprises which would be linked to it in the public mind, avoid not only actual impropriety but also the appearance of impropriety. Accordingly, the Successful Vendor is expected to establish and enforce a code of conduct for all employees, independent vendors and subcontractors that will help achieve these objectives as well as follow the rules and procedures established, and from time to time amended, by the NCEL.

### **3.27 CONSULTANTS AND LOBBYISTS**

The Successful Vendor and its approved subcontractors shall disclose all written and oral agreements with all lobbyists and consultants doing work on its behalf in the State of North Carolina and before the federal government. The Successful Vendor and its approved subcontractors shall also comply with all state and federal lobbying Applicable Laws.

Any Contract with the Successful Vendor who has not complied with these disclosure requirements is voidable at the sole option and discretion of the NCEL. Failure to provide the NCEL with timely disclosure updates during the term of the Contract may result in the termination of the Contract by the NCEL.

### **3.28 CONTRACT CONVERSION**

It is contemplated that the NCEL, prior to the expiration of the term of the Contract resulting from this RFP, will award a new contract to an advertising agency in order to secure advertising and related services for the NCEL. The parties understand and agree that the NCEL may utilize the last specified number of days of the Contract term, as agreed upon by the parties to the Contract, for transitioning the provision of such services. The Successful Vendor will cooperate fully with this process.

The continuation of all marketing services without any interruption is of the highest priority to the NCEL. Accordingly, the Successful Vendor agrees to cooperate with any subsequent new Vendor to ensure the continuation, or the seamless transition, of the advertising and related services and programs without any interruption to the NCEL's current marketing efforts.

### **3.29 USUFRUCT**

If, for any reason other than breach of Contract by the NCEL, the Successful Vendor should become unable to service the Contract resulting from this RFP, the NCEL shall acquire a usufruct in all contractual items owned or licensed by the Successful Vendor in conjunction with the Contract which are necessary to provide such services.

### **3.30 NONDISCRIMINATION**

The Successful Vendor hereby covenants and agrees that no person shall be excluded from participation in, or be denied benefits of, the Contract, or be excluded from employment, denied any of the benefits of employment or otherwise be subjected to discrimination on the grounds of handicap or disability, age, race, color, religion, sex, national origin or ancestry, or any other classification protected by federal, North Carolina state constitutional or statutory law or other Applicable Laws. The Successful Vendor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

## **PART IV – REQUIRED INFORMATION**

### **4.1 MANDATORY COMPONENTS**

The integrity of the North Carolina Education Lottery is essential. The NCEL must maintain control over all functions and be assured that they are performed to provide the greatest long-term benefit to the State of North Carolina, the greatest integrity for the NCEL and the best service and products for the public, all in a manner consistent with the dignity of the State of North Carolina. This RFP sets forth the minimum requirements, specifications, functions, marketing services and equipment that the NCEL believes must be provided by a Vendor that is committed to the implementation of such a program.

### **4.2 STATEMENT OF UNDERSTANDING**

Any deviation from any requirement set forth in this RFP may affect the evaluation of a Proposal and may cause its rejection as a non-responsive to this RFP.

### **4.3 VENDOR COMMITMENT**

A Vendor must sign and submit the Proposal Signature and Certification Form included as *Attachment B* and made a part hereof. The form must be signed by a person duly authorized to legally bind such Vendor.

### **4.4 VENDOR CONTACT PERSON**

A Vendor shall provide the name, address, telephone number, e-mail address and facsimile number of the person to provide notification or contact concerning questions regarding its Proposal.

Until the NCEL is notified otherwise by the Successful Vendor, this contact person shall serve as such to all joint ventures, strategic partners and prime contractor team members throughout the term of the Contract, if awarded and executed.

### **4.5 BACKGROUND INFORMATION**

The NCEL will investigate, at a minimum, the financial responsibility, security and integrity of any Vendor that submits a Proposal.

A Vendor must complete and submit as part of its Proposal the Contract compliance and Financial Disclosure Form, included as *Attachment C* and made a part hereof. Vendors must also fully comply and cooperate with all investigations conducted under G.S. §18C-151(c) or §18C-152 and other applicable Sections of the Act or Applicable Laws.

A Vendor must complete and submit, as part of its Proposal, for itself and all of the individuals listed in this paragraph, the Authorization for Investigation Form, included as *Attachment D* and made a part hereof, and Consent Form, included as *Attachment E* and made a part hereof, in both cases to allow the NCEL access to the criminal history of the Vendor and its employees assigned to this project. Such Authorization for Investigation Form and Consent Form shall authorize access to the criminal history and backgrounds of the following persons, as well as the Vendor, as applicable: (i) if the Vendor is a corporation, the officers, directors and each stockholder in the corporation; however in the case of owners of equity securities of a publicly traded corporation, only those names and addresses of those known to the corporation to own beneficially five percent (5%) or more of such corporation's securities need be disclosed, as well as the same information for a parent corporation of such Vendor corporation if the parent corporation's shares are publicly traded; (ii) if the Vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust; (iii) if the Vendor is an association, the members, officers and directors; (iv) if the Vendor is a partnership or joint venture, all of the general partners, limited partners or joint ventures; and (v) for any Vendor, any person who can exercise control or authority, or both, on behalf of the Vendor.

A Contract resulting from this RFP shall not be entered into with any Vendor who has not complied with the disclosure requirements of this RFP, the Act and Applicable Laws. Any Contract with a Successful Vendor who has supplied false disclosure information is voidable at the option of the NCEL. A Contract with the Successful Vendor who does not comply with the requirements for periodically updating such disclosures as specified by the Contract during the term or the Contract may be terminated by the NCEL.

#### **4.6 DISCLOSURE OF LITIGATION AND LEGAL MATTERS**

A Vendor must include in its Proposal a complete disclosure of any civil or criminal litigation or indictment involving such Vendor. A Vendor must also disclose any civil or criminal litigation or indictment involving any of its joint venturers, strategic partners, prime contractor team members and subcontractors. Specifically, the Vendor must disclose, on behalf of itself and each of the persons or entities described in G.S. §18C-152(b), all of the items and information described in G.S. §18C-152(c). Failure to comply with these minimum required disclosures can result in the Vendor's Proposal being deemed to be non-conforming and the Vendor being disqualified. This disclosure requirement is a continuing obligation, and any litigation commenced after a Vendor has submitted a Proposal under this RFP must be disclosed to the NCEL in writing within five (5) days after it is filed.

#### **4.7 SUBCONTRACTORS**

For any subcontractor that comprises at least twenty-five percent (25%) of the cost of a Vendor's Proposal, such Vendor shall disclose all of the information required by Sections 4.5 and 4.6 for such subcontractor as if the subcontractor itself was the Vendor.

#### **4.8 FINANCIAL SOUNDNESS**

A Vendor must provide adequate information to permit an evaluation of its capabilities to undertake and complete satisfactorily any Contract awarded and executed pursuant to this RFP. A Vendor must provide evidence of financial responsibility and stability for performance of a Contract of this magnitude. A Vendor must demonstrate the ability to finance the project described by the Vendor's submission and must also disclose any outside financial resources that will be utilized.

In addition, a Vendor must submit a copy of its last three (3) years financial statements that have been audited by an independent public accounting firm. A Vendor's failure to submit the requested financial statements will result in a disqualification of its Proposal.



## **PART V – ADVERTISING SERVICES**

### **5.1 VENDOR BACKGROUND, EXPERIENCE AND CAPABILITIES**

#### **5.1.1 YEARS IN BUSINESS**

The Vendor must submit a statement (no longer than one page) indicating the length of time the Vendor and, if applicable, the media buying house have been in business.

#### **5.1.2 LIST OF ACCOUNTS/BILLINGS**

The Vendor must have annual billings of at least Five Million Dollars (\$5,000,000) and must include in its Proposal a list of all current accounts and the date of acquisition of each account. The Vendor must also include a list of accounts terminated in the past two (2) years and reason for such termination. The Vendor should list the accounts by approximate annual billing size (beginning with the largest account) and must include for each account a description of the type of projects billed, the name of the key contact person for each account and such contact person's telephone number. The NCEL reserves the right to contact any of the contact persons provided pursuant to this Section. Each Vendor must disclose information regarding any potential, actual or apparent conflicts of interest between any current client of the Vendor and the NCEL.

The Vendor must also disclose the following in its Proposal:

- a) Clients who required spot broadcast media purchases in North Carolina and the type of media (radio, TV, print and outdoor) utilized;
- b) Entertainment clients;
- c) Gaming clients;
- d) Lottery clients;
- e) Consumer goods clients;
- f) State Government clients; and
- g) Current and non-current clients: for all current clients, the length of time each client has been a client of the Vendor, and for all non-current clients which have ceased to be clients of the Vendor in the two (2) years preceding the date of the Vendor's Proposal, the reason such client is no longer a client of the Vendor.

#### **5.1.3 MEDIA LIST**

The Vendor must include in its Proposal a list of the following media indicating total media dollars placed by the Vendor during the twelve (12) months ending December 31, 2005:

- a) Spot TV;
- b) Spot radio;
- c) Outdoor; and

- d) Other.

#### **5.1.4 FULL SERVICE CAPABILITY**

The Vendor must include in its Proposal a written description (not to exceed four (4) pages) outlining such Vendor's full service advertising capability, including:

- a) Account services;
- b) Creative staff;
- c) Media planners/buyers;
- d) Broadcast and print production planning and execution;
- e) Accounting/budget coordination;
- f) On line marketing;
- g) Account planning/research; and
- h) Expert advice on key trends and issues in general market advertising.

#### **5.2 ACCOUNT PERSONNEL**

A Vendor's Proposal shall include an organization diagram and a staffing plan. Key staff must be identified, the nature and scope of each person's responsibilities and duties must be outlined and detailed resumes must be provided. The organization diagram should indicate reporting relationships, location of the staff, and the percentage of time to be dedicated to the NCEL account. Indicate staff positions that will be new hires. In addition to all other persons needed by the Successful Vendor to perform all services required under this Procurement, a Vendor must provide and identify three (3) full-time professionals who will work exclusively on the NCEL account.

The resumes submitted of the Vendor's key staff must include the following information for each individual:

- a) Name and title of each staff member that will be assigned to the NCEL account (please note that the Vendor cannot aggregate staff positions in order to comply with the dedicated time requirements set forth herein);
- b) The total number of years of experience in advertising;
- c) Education (school/major/degree/year);
- d) Accounts handled by such staff person while employed by the Vendor, length of time of each account, size and complexity of account, and level of responsibility (indicate which are current responsibilities);
- e) Accounts with previous employers and level of responsibility; and
- f) For staff yet to be determined, please specify which positions and levels will be committed to the NCEL account, the location of the staff, and the minimum qualifications expected for that position, i.e., education and work experience.

### **5.3 CASE STUDIES**

#### **5.3.1 CAMPAIGN DEVELOPMENT AND EXECUTION**

The Vendor shall provide a written case study of not more than five (5) pages, excluding exhibits, describing an advertising campaign representative of its work from start to finish. Of particular relevance to the NCEL is work in entertainment environments and/or competitive retail-driven product categories such as soft drinks, candy, etc. The NCEL will not accept submissions longer than five (5) pages. The Vendor must address the following items in the case study submitted in connection with this Section:

- a) Name of client, contact person, telephone number and date campaign was executed;
- b) Key facts from background market research and analysis, i.e., budget, competitive, organizational, etc;
- c) Identification of problems/opportunities, i.e., target markets;
- d) Budget;
- e) Advertising objective;
- f) Creative strategy positioning;
- g) Campaign execution – TV (1/2" VHS reel), radio (CDs or cassette tapes), print (finished), as applicable;
- h) Media objectives/strategy;
- i) Media plan/summary, including verifiable cost per thousand (CPM) and cost per point (CPP); and
- j) Evaluation of campaign results, i.e., sales, market research, media post-buy.

#### **5.3.2 PRODUCT IMAGE CASE STUDY**

The Vendor shall provide with its Proposal a case study of not more than four (4) pages, excluding exhibits, describing one campaign run/aired in North Carolina that demonstrates the Vendor's ability to maintain or promote a product's image and communicate intangible benefits. (This case study must be from a different campaign than the case study submitted pursuant to Section 5.3.1.) The Vendor must address the following items in the case study submitted in connection with this Section:

- a) The creative strategy and execution;
- b) Advertising objective;
- c) Budget;
- d) The media planning and execution implications;
- e) Media strategies explored;

- f) Ability to provide statewide reach; and
- g) Tools used by the Vendor to evaluate the campaign's effectiveness against the audience(s).

#### **5.4 SAMPLES OF WORK**

The Vendor shall submit with its Proposal creative samples produced within the past two (2) years by the Vendor's office and the creative director that will be servicing the NCEL account. Samples must be from at least two (2) different campaigns and must be different from the case studies submitted pursuant to Sections 5.3.1 and 5.3.2 above. For each of the samples submitted pursuant to this Section, the Vendor must provide a write-up of not more than two (2) pages indicating the account name, product name, marketing objective, creative strategy, and creative team(s), and must identify the staff who will be assigned to the NCEL account. The Vendor must include the following items in the samples submitted in connection with this Section:

- a) Three (3) TV ads on a single ½" VHS reel;
- b) Three (3) radio ads on the same VHS reel;
- c) Three (3) outdoor ads (5" x 7" or 8" x 10" photos are acceptable); and
- d) Three additional items (any medium) that illustrate the Vendor's unique creative strengths.

#### **5.5 NONEXCLUSIVE RIGHTS**

As indicated in Section 2.17 of this RFP, nothing in this RFP or any Contract resulting from this RFP shall preclude the NCEL from purchasing other advertising, public relations, creative services or related services for its use from other vendors, individuals or entities as the NCEL, in its sole discretion, shall determine.

#### **5.6 REJECTION OF RESPONSES**

As indicated in section 1.7 of this RFP, among other things, the NCEL reserves the right to reject any or all Proposals to this RFP, or any portion thereof, if the NCEL determines that it is in the NCEL's best interest. The NCEL may reject any Proposal which is conditional, incomplete, or contains any material deviations. Any provisions of this RFP which are defined as requirements shall be considered mandatory. If all Vendors fail to meet one or more of the mandatory requirements, the NCEL reserves the right to continue the evaluation of the Proposals and to select the response which most closely meets the requirements specified in this RFP.

#### **5.7 FINALIST CASE STUDY AND PRESENTATION**

##### **5.7.1 INTRODUCTION**

The NCEL will require an oral presentation by the Finalist Vendors chosen to participate as finalists pursuant to this RFP. The Finalist Vendor's Account Supervisor/Executive, Creative Director and Media Planner for the NCEL account must be key presenters in such presentation. The presentation may be a maximum of one (1) hour in length and will take place at the NCEL's headquarters office in Cary, North Carolina. The presentation should begin with a brief (no longer than ten (10) minutes) description and background of

the Finalist Vendor. The Finalist Vendors must submit a written overview of the oral presentation at or before the time of such presentation. This overview must not exceed eight (8) pages, excluding visual representations.

Each Finalist Vendor will be asked to develop an advertising plan and media plan for the launch of the North Carolina Education Lottery. Due to time constraints, it is not required that the advertising and media plan be specific with execution details, but rather each plan should include an overall marketing summary and strategy for the launch of the lottery. The Successful Vendor must implement the final plan approved by the NCEL by the Startup Deadline (April 5, 2006). The NCEL reserves the right to request modifications to the Successful Vendor's advertising and media plan.

The NCEL is not requesting that the Vendors submit logo designs as part of its Proposal. Nevertheless, the Successful Vendor must design the NCEL logo within three (3) days of the award of the Contract. The NCEL logo designed by the Successful Vendor is subject to the approval of the NCEL.

#### **5.7.2 FINALIST CASE STUDY**

As discussed in greater detail in Section 2.11.5 C of this RFP, which is incorporated by reference herein, the Finalist Vendors shall submit their Finalist Case Studies.

### **5.8 OVERVIEW OF ADVERTISING AND MEDIA PLAN**

#### **5.8.1 ASSIGNMENT**

The Successful Vendor will be required to develop a thirteen (13) week general market advertising plan (which covers the period of time between the Startup Deadline and the Online Deadline) for the launch of the North Carolina Education Lottery, along with a marketing plan for the introduction of the NCEL's first four instant games and the Powerball game. The approximate total advertising budget for fiscal year 2006 is One Million Nine Hundred Thousand Dollars (\$1,900,000).

#### **5.8.2 MARKETING OBJECTIVE**

The NCEL integrated communications objective is to provide effective statewide general market advertising for the launch of the North Carolina Education Lottery. Such advertising must promote lottery games and initiatives, in order to raise funds for the Education Lottery Fund, but yet be consistent with the NCEL's objectives of maintaining the dignity and integrity of the State of North Carolina.

#### **5.8.3 ADVERTISING OBJECTIVES**

The NCEL's advertising objectives are as stated herein and include at least the following:

- a) Meet or exceed the NCEL's retail sales and revenue goals by providing players with a clear, efficient presentation of the current game menu and by introducing new games as part of the overall fun and excitement of playing NCEL games;
- b) Maximize contributions to the Education Lottery Fund;
- c) Create and foster a positive public image for the NCEL brand by reinforcing the NCEL's mission to raise revenue for education through the Education Lottery Fund;

- d) Increase statewide awareness of the NCEL brand and products among potential players; and
- e) Educate consumers on how to play the NCEL lottery games.

#### **5.8.3.1 VENDOR'S ADVERTISING PLAN**

The Vendor should submit an advertising plan that includes at least the following:

- a) Overall marketing objective;
- b) Key facts from market research and/or other analysis considered during the development of the strategies and campaigns;
- c) Problems and opportunities considered during the development of the strategies and campaigns, including long-term versus short-term implications;
- d) The advertising objective and strategies and how these were defined;
- e) Creative positioning/strategy development process and rationale;
- f) Creative presentation (only storyboard, slides, scripts or rough cuts for radio accepted); and
- g) Key creative, account, planning/research and media personnel responsible for the development of the strategies and campaigns who will work on the NCEL account.

#### **5.8.3.2 VENDOR'S MEDIA PLAN**

The Vendor should submit a media plan that includes at least the following:

- a) Media objectives, considerations and strategies;
- b) Media selection, weight levels and timing;
- c) Proposed media merchandising strategies; and
- d) The Vendor's rationale for the above recommendations.

### **5.9 SCOPE OF SERVICES**

#### **5.9.1 INTRODUCTION/PRODUCT MIX**

The NCEL will offer various games of chance which are divided into two distinct categories: instant ticket games and online ticket games.

##### **5.9.1.1 INSTANT TICKETS**

The NCEL may create and distribute approximately seventy (70) or more instant ticket games per year. Instant ticket games offer players the opportunity to scratch off a latex cover and immediately reveal whether the player has won a prize. The strategy is to keep the games fresh and to offer a wide variety of tickets based on theme, price point and play style.

### **5.9.1.1 ONLINE GAMES**

The current anticipated online game product mix during the first twelve (12) months following the Online Deadline consists of Powerball and a daily game.

#### **5.9.1.1.1 POWERBALL**

Powerball is a multi-state game which has a rolling jackpot. Players either: (i) choose five (5) numbers from one field of numbers and one (1) number from a second field of numbers; or (ii) request a "Quick Pick" in which case the computer will randomly choose the player's numbers. Powerball tickets currently cost One Dollar (\$1) for each play.

### **5.9.2 VENDOR'S RESPONSIBILITIES**

Subject to the instructions and decisions of the NCEL, the Successful Vendor will be responsible for the following:

- a) Provide to the NCEL full professional advertising services and advice during the term of the Contract, including but not limited to assisting in the overall marketing analysis, strategy development and positioning of the NCEL and its products.
- b) Provide input for planning, coordinating and executing specific portions of the NCEL's annual advertising plan, making professional recommendations during the term of the Contract for revisions and/or modifications to the advertising plan based upon sales market conditions and any other contributing factors.
- c) Interact and work with the NCEL staff and other marketing vendors to provide the integration of advertising plans and achieve the NCEL's overall objectives and goals, including but not limited to:
  - i) A minimum of weekly meetings with the NCEL staff to discuss purchasing, concepts, development and other issues related to marketing/sales issues; and
  - ii) Advertising reviews to the NCEL Commission, as requested;
- d) Create and produce professional advertising and related services for the NCEL's existing products, new products and special projects as requested;
- e) Adhere to schedules which may be adopted from time to time between the NCEL and the Successful Vendor to ensure that radio and/or television commercials, print advertising, point-of-sale materials and other related materials are completed in advance of the Startup Deadline, Online Deadline or other campaign. Materials that are being distributed must be approved by the Executive Director of the NCEL, and/or the Executive Director's designee(s), prior to production of the advertisement, related material or other services. The NCEL reserves the right to approve, and in its sole discretion to modify or reject any and all schedules and plans submitted by the Successful Vendor, and to direct the Successful Vendor to cease work in connection with any such plan;
- f) Provide a preliminary production schedule within one (1) week of receipt of a creative marketing plan from the NCEL. The production schedule shall allow sufficient time for developing, presenting, and refining the creative concepts, editing and revising the selected option per NCEL request, obtaining final

approval from the NCEL translating and producing the final product, and distributing the finished product according to the NCEL specifications;

- g) Complete Successful Vendor work or sub-contracted work with forty five (45) days of estimate approval except as otherwise agreed to by the NCEL;
- h) Provide creative services to the NCEL as follows:
  - i) Creative services for television and radio production including, but not limited to, scripts, pre-production, editing and finalization of spots;
  - ii) Creative services for print production including, but not limited to, production and finalization of advertisements;
  - iii) Concepts, design and/or artwork for in-store communications;
  - iv) Artwork for outdoor production; and
  - v) Art direction services for broadcast, print and outdoor production;
- i) Create and produce point-of-sale advertising pieces as designated by the NCEL;
- j) Create advertising that is complimentary and consistent with any and all point-of-sale advertising materials;
- k) Develop general market media plans and, with the approval of the NCEL, purchase general market television, radio, print, outdoor and any new media vehicle that will assist in marketing NCEL products;
- l) Provide the NCEL with post-buy analyses quarterly, within two weeks of publication of the Arbitron and Nielsen research, indicating that the reach and frequency goals of each media buy were achieved within budget, or if a gross rating point shortfall were to occur, provide the NCEL with analysis as to how the Vendor plans to rectify underachieved results with specific media during the next media purchase of that type;
- m) Ensure that all media that is run or published according to any contracts or placement instructions. The Successful Vendor must provide affidavits, tear sheets or other documentation to the NCEL in connection therewith. The Successful Vendor must notify the NCEL before approving any "make goods" for any ads that did not run as scheduled. All such materials shall be maintained by the Successful Vendor and must be available for inspection by the NCEL or authorized representatives of the NCEL. Affidavits and/or tear sheets must accompany any final billings submitted to the NCEL;
- n) Request and audit the airing and or publishing of NCEL winning numbers from all radio stations, TV stations and newspapers included in a NCEL buy;
- o) Negotiate bonus spots and/or added value at no additional charge from all radio and TV stations included in a NCEL buy. Any bonus spots provided by participating stations must be assigned a value and reported monthly to the NCEL;
- p) Purchase on behalf of the NCEL certain materials and services used in the production of the NCEL advertising and sales promotion materials. The NCEL



shall pay the Successful Vendor for all approved obligations incurred by the Successful Vendor on the NCEL's behalf within the scope of Successful Vendor's authority;

- q) The Successful Vendor shall not incur any liability on the NCEL's behalf for any item of space or time in an advertising medium or for the purchase of materials and services, or incur any other expense without first securing the written authorization of the Director (or Director's designee). In connection with such authorization, the Successful Vendor is subject to the following guidelines:
- i) The Successful Vendor must provide a cost estimate to the NCEL that provides documentation of three (3) bids (levels to be determined by the NCEL). If three (3) appropriate vendors are not available for the project as approved, the Vendor shall provide written documentation of such to accompany the cost estimate.
  - ii) If the Successful Vendor recommends any vendor other than the lowest bidder, the Successful Vendor shall provide written documentation supporting such recommendation, which shall accompany the cost estimate. The NCEL may or may not choose, in the NCEL's sole discretion, to follow the Successful Vendor's recommendation.
  - iii) Bids shall be secured from North Carolina-based vendors whenever possible. If local vendors are not available for project as approved, the Vendor shall provide written documentation to accompany the cost estimate and shall secure written approval from the NCEL prior to seeking out-of-state vendors.
  - iv) Cost estimates shall be presented by the Successful Vendor to the NCEL in a timely manner, no less than two (2) business days prior to commencement of work in order to allow for adequate processing time by the NCEL.
  - v) The estimated number used to track each project will be issued by the Successful Vendor and invoices shall be numbered consistent with estimate number.
  - vi) All cost estimate/authorizations must be approved and be signed by the Executive Director (or designee indicated by the Executive Director) and the Successful Vendor may not begin work until the Successful Vendor has received a signed estimate/authorization from the NCEL.
  - vii) A revised estimate reflecting all services or charges amounting to more than ten percent (10%) of the original estimate must be approved by the NCEL prior to additional performance and must be accompanied by a written justification stating why the increase in cost is necessary. Revised estimates should also include previous approved amounts and/or history of amounts.
  - viii) Media invoices will be paid only upon completion of the media flights and must include a notarized affidavit that lists all spots being billed, bonus spots received, station, date, number of spots aired and cost. Invoices, including credits, should be submitted to the NCEL within ninety (90) to one hundred and twenty (120) days of the media spot run.

- ix) Any canceled jobs must be followed by a revised closed estimate reflecting all canceled portions of the job and any expenses actually incurred prior to cancellation. Once an estimate is closed, no further billing can be submitted. The Successful Vendor is required to mark "Closed" on the last invoice to be submitted to the NCEL for payment for each job.
- x) The NCEL's fiscal year ends on June 30<sup>th</sup>. All invoices for that fiscal year must be submitted by September 30<sup>th</sup> of the new fiscal year. The NCEL reserves the right not to pay any invoices received after September 30<sup>th</sup>.
- xi) Payment by the NCEL is due with thirty (30) days of receipt of properly prepared and uncontested Successful Vendor invoices, unless as otherwise agreed upon by both parties.
- xii) The Successful Vendor shall make payment to its vendors and Subcontractors that are working on NCEL projects or advertising within fifteen (15) days of receipt of such payment from the NCEL to the Successful Vendor. In the event that the NCEL becomes aware of the Successful Vendor's default of these terms, the NCEL will notify the Successful Vendor immediately.
- xiii) The Successful Vendor agrees to retain all financial and accounting records pertaining to the NCEL for five (5) years and to comply with the NCEL's accounting procedures for all submissions of work order, estimates and invoices.
- r) Investigate and obtain talent releases for all persons appearing in any NCEL advertising, including television, radio, print and outdoor, whether or not the talent utilized is bound by a collective bargaining agreement and whether or not the talent appears at the forefront or in the background, and is speaking or non-speaking;
- s) The NCEL acknowledges that the Successful Vendor may be bound by certain agreements with respect to the employment of talent, including such agreements with the American Federation of Television and Radio Artist ("**AFTRA**"), Screen Actors Guild ("**SAG**") and/or American Federation of Musicians ("**AFM**"), and that the production of advertising material from which the employment of talent is require may necessitate the negotiation, review, approval and/or execution by the Successful Vendor and/or the NCEL of a separate agreement with AFTRA, SAG and AFM or other relevant association with respect to employment of specific talent;
- t) Conduct NCEL Market Research studies, as requested, that involve advertising research such as recall tests, copy and motivation tests, media weight tests and attitude studies. The Successful Vendor may also conduct market research studies that assist the NCEL in the areas of strategic planning, retailer attitudes and retail audits. These studies may be qualitative or quantitative and may be ad hoc or ongoing projects. The NCEL will manage and contribute significantly in developing study objectives and design;
- u) Provide to the NCEL a detailed written monthly activity report and media review with a brief summary and recommendations. The monthly activity report should list all open jobs as of the end of the month and provide at least the following information: (i) job number, (ii) brief description of job, (iii) original estimate

amount, (iv) an estimate of the costs incurred to date that have not yet been billed, and (v) billings rendered to date on each job;

- v) Provide to the NCEL, as requested and within one (1) week, a report summarizing all NCEL approved expenditures to date for the current fiscal year. The summary must indicate the total amount available for the year and the total amount currently committed, the current amount billed to the NCEL during the year, the amount billed that has not yet been paid, and amounts committed that have not been billed;
- w) Provide the NCEL with a monthly analysis of media spending by county and a comparison of sales levels achieved in those areas as requested by the NCEL. The NCEL will provide detailed sales information to the Successful Vendor on an ongoing basis, as available. Each such analysis shall include a recommendation from the Vendor regarding any changes in media expenditures, as applicable; and
- x) Provide the NCEL with weekly status reports, contact reports, minority compliance reports and other reports, as requested.

## **5.10 COMMITMENT TO NONDISCRIMINATION AND MINORITY PARTICIPATION**

### **5.10.1 INTRODUCTION**

The Act has specific references to minority participation in the formation and operation of the NCEL. The Act requires compliance with Article 8 Chapter 143 as applicable.

### **5.10.2 POLICY STATEMENT**

The NCEL strongly encourages participation by minority-owned businesses. In order to achieve or exceed the goals established by the Act and Applicable Laws, and to provide equal business opportunities in the procurement process, the NCEL encourages Vendors to contract with minority-owned businesses, including in the formation of joint ventures. This is an effort to encourage North Carolina businesses to work collaboratively with each other. The NCEL wishes to make every reasonable effort to utilize minority-owned businesses when opportunities exist. The NCEL will take active steps to encourage full participation of qualified, capable, competent and competitive minority-owned businesses, possibly including, but not limited to, the implementation of a minority business participation outreach plan, utilize media likely to inform potential minority businesses of the bid being sought and work with the Office of Historically Underutilized Businesses to identify minority businesses that have previously indicated an interest in the procurement process with respect to the lottery industry.

In the selection of any Vendor in the procurement of goods, commodities or services, significant minority-owned business participation will be sought commensurate with the availability of such businesses in the relevant markets.

### **5.10.3 DEFINITIONS**

For purposes of this RFP, the NCEL incorporates the definitions of "minority business" and other terms as set forth in G.S. §143-128.2 (g)(1):

- (1) The term "minority business" means a business:
  - a. In which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged

individuals, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and

- b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

(2) The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:

- a. Black, that is, a person having origins in any of the black racial groups in Africa;
- b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
- c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
- d. American Indian, that is, a person having origins in any of the original Indian peoples of North America; or
- e. Female.

(3) The term "socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

#### **5.10.4 DOCUMENTATION OF MINORITY BUSINESS PARTICIPATION**

Given the NCEL policy regarding participation of minority businesses and the express provisions of the Act, a Vendor shall carefully consider the inclusion, of and shall commit not to discriminate against, minority businesses in the development of its Proposal and in assembling any joint venture, strategic partnership, prime contractor team or subcontractors. The Equal Business Opportunity Forms included in *Attachment F* to this RFP must also be completed and submitted as and when indicated.

All Vendors are required to submit:

(1) Identification of Minority Business Participation (*To be completed, signed and submitted by all Vendors with their Proposals*)

Vendors are required to submit an Identification of Minority Business Participation form with their Proposals as evidence and documentation of minority businesses that will be utilized in the performance of the Contract should they be selected as the Successful Vendor;

AND ONE OF EITHER (2a – Affidavit A) OR (2b – Affidavit B), as applicable:

(2a) AFFIDAVIT A- Listing of Good Faith Efforts (*To be completed, signed and submitted by Vendors with their Proposals, if applicable*)

Vendors are required to make a good faith effort to comply with the requirements and purpose of the Act during the bid process; or

(2b) AFFIDAVIT B- Intent to Perform Contract with Own Workforce *(To be completed, signed and submitted by Vendors with their Proposals, if applicable)*

Vendors are required to certify that they have the capabilities to perform and will perform all elements of the work on this Procurement with his/her own current workforce.

Once a Vendor has been selected as the Successful Vendor, they must submit, within seventy-two (72) hours after notification of being selected as the Successful Vendor, ONE OF EITHER (3a – Affidavit C) OR (3b – Affidavit D), as applicable:

(3a) AFFIDAVIT C- Portion of the Work to be Performed by Minority Firms *(To be completed, signed and submitted by only the Successful Vendor)*

Vendors are required to document the amount of minority businesses that will be utilized in the performance of the Contract;

OR

(3b) AFFIDAVIT D- Good Faith Efforts *(To be completed, signed and submitted by only the Successful Vendor)*

Vendors are required to provide documentation regarding their good faith efforts to comply with the requirements and purpose of the Act.

#### **5.10.5 ADDITIONAL NON-DISCRIMINATION AND MINORITY PARTICIPATION REQUIREMENTS**

As a part of its performance for the NCEL, the Successful Vendor will be required to:

Agree that it will ensure a diverse workforce, provide equal opportunities and not discriminate on the basis of race, color, religion, national origin, age, sex or disability;

Agree to ensure and maintain a work environment free of harassment, intimidation and coercion at all work sites and provide its plan for providing a non-discriminatory work site;

Describe its plan to continue to provide interested minority businesses with adequate information about any subcontracting opportunities available in connection with this project;

Describe its plan to continue to provide equal opportunity to minorities when replacing or adding subcontractors and suppliers;

Identify the efforts that have been undertaken to recruit qualified minority employees named in its Proposal and efforts that will be undertaken to recruit minority employees for positions that are not yet filled, including outreach to educational institutions;

Provide information about the total number of the full-time positions for this project that are or will be held by minorities, and provide the number and the percentage of the above that are or will be residents of the State of North Carolina; and

Identify the percentage and the number of supervisory positions that will be filled by minority employees.

The Successful Vendor may be required to attend a conference with the NCEL from time to time to review the project scope and to review minority business participation as outlined hereinabove and as outlined in the EBO Forms.

#### **5.10.6 NONCOMPLIANCE WITH EQUAL BUSINESS OPPORTUNITY PROGRAM**

Noncompliance with any of the foregoing requirements of this RFP, the Act or Applicable Laws may result in suspension from bidding, prohibition from contracting, cancellation of contracts or monetary penalties.

### **PART VI - COST**

#### **6.1 INTRODUCTION**

The NCEL will offer a compensation package that is based solely upon on a fixed percentage fee. A Proposal must meet both the immediate and long-term advertising needs of the NCEL. Therefore, the objective of this RFP is to offer compensation that rewards the Successful Vendor for excellent performance while ensuring that the NCEL will achieve its desired goal regarding the advertising and other services related to the start-up of the lottery, including a statutory requirement to return thirty-five (35%) percent of total revenues to the Education Lottery Fund annually.

#### **6.2 PRICING FORMULA**

The method of compensation that will be utilized is a percentage of total annual advertising budget, as determined by the NCEL, handled by the Successful Vendor. A Vendor must state the percentage of advertising budget required as its compensation to accomplish the tasks specified in the Proposal and this RFP. The single cost quotation should be presented on a separate, signed page and be expressed as a numeric percentage of the NCEL's annual advertising budget carried to no more than four (4) decimal places. For example, 1.0000%.

Vendors are reminded that the cost quotation should cover all of the services and other items covered and required by this RFP and Procurement, as well as other services deemed necessary by the Vendor, to be provided by the Successful Vendor during the entire term of the Contract. The Successful Vendor shall be compensated solely via the fixed percentage fee agreed upon by the NCEL. All services required by this RFP and Procurement must be included in such fee, including, without limitation:

- Assist in overall marketing analysis, strategy and position of the NCEL and its products.
- Develop general market media plans and post-buy analysis of all media buys.
- Provide input for planning, coordinating and executing specific portions of the NCEL annual advertising plan.
- Work and interact with NCEL marketing staff, and any other marketing vendors to provide integration of advertising plans.
- As authorized, develop specific plans to maximize the awareness of the lottery and its games and recommend budgetary savings where appropriate.
- In conjunction with NCEL, develop an advertising and marketing research plan.
- Monitor on behalf of the NCEL the performance of all media suppliers to ensure that all services purchased are delivered.

- Conduct meetings and follow up on assignments, providing attention to detail and clear focus on critical issues.
- Coordinate, submit and be responsible at functions, including associated entry fees of up to Ten Thousand Dollars (\$10,000) per year, for award recognition designated by the NCEL. The NCEL shall retain any awards, trophies, plaques, etc. that may be awarded for creative work that was created and produced by the Vendor for the NCEL.
- Provide all costs associated for any of the Vendor's personnel to attend any NCEL related activities, including but not limited to conferences, sales meetings and retailer visits.
- Provide for the management and traffic of production development, media placement, and timelines and any required reports, including, but not limited to, monthly county-by-county advertising/sales evaluation and monthly projects in progress.
- As authorized, implement and satisfy all requirements of the creative and media plans, including the following:
  - Create and produce all advertising materials for print, broadcast, point-of-sale and other media, with a minimum of three (3) creative executions per campaign;
  - Prepare and evaluate competitive bids for productions and media, prepare and submit estimates and invoices to the NCEL for all work performed under the Contract, and reconcile the advertising budget with the NCEL on a monthly and quarterly basis;
  - Verify the publication of all requested media according to contracts and placement instructions; and
  - Evaluate performance of broadcast schedules as compared with ratings and estimates.

### **6.3 PAYMENT**

Upon determination of the amount due to the Successful Vendor on (i) in the case of media invoices, the fifteenth (15<sup>th</sup>) day of every month, and (ii) in the case of production invoices, the thirtieth (30<sup>th</sup>) day of every month, payment (less applicable damages and penalties which may be deducted) will be processed in an expedited manner. Vendors may propose any alternative methods or schedules of payments, which will be considered during contract negotiations with the Apparent Successful Vendor.

### **6.4 SUBMIT COST PORTION OF PROPOSAL SEPARATELY**

All copies of the cost portion of the Proposal required under this Part VI must be submitted in sealed and labeled envelopes (marked as: Cost Proposal RFP # LC-000003) separate from the information required by Parts IV and V of this RFP. Any Proposal which fails to adequately separate the cost portion of the Proposal from the other information required by this RFP may be considered non-responsive and rejected by the NCEL.

## **ATTACHMENT A**

### **VENDOR CERTIFICATION**

#### **PROFESSIONAL ADVERTISING AND RELATED SERVICES**

I hereby do certify as follows:

1. the initial prices and other terms and provisions included in the Proposal submitted by \_\_\_\_\_(the "Proposing Vendor") are accurate and binding for 180 days from the Proposal due date (the "Proposal Offer Period");
2. all charges are, to the best of my knowledge, accurate and complete;
3. the Proposing Vendor acknowledges and agrees that this Proposal will be considered valid and irrevocable for the Proposal Offer Period and, if an award is not made within the Proposal Offer Period or if a Contract with the Successful Vendor is for any reason not executed within the Proposal Offer Period, it shall be incumbent upon the Proposing Vendor to notify the designated contact person identified in Section 2.1 of the RFP in writing if it does not want its Proposal to be further considered beyond the Proposal Offer Period (i.e., in the event of a breach or termination, the NCEL may decide to return to the remaining Vendors' Proposals). Failure on the part of the Proposing Vendor to notify the designated contact person identified in Section 2.1 of this RFP will mean that its Proposal remains valid even after the Proposal Offer Period;
4. the cost and other terms and provisions contained in the Proposal accurately reflect the Proposing Vendor's total proposed cost, including any applicable discounts, and the Proposing Vendor would deliver the services and related items for that amount and according to those terms and provisions if the NCEL wanted to accept the prices and other terms and provisions described in its Proposal without negotiation;
5. all inquiries to the NCEL and other pre-Proposal review and evaluation efforts have been completed and that no extra costs or payments to any entity, including this Proposing Vendor, will be allowed for any miscalculation, deficiency, oversight and failure to make suggestions regarding possible additional needs for desired features, or any other difference in cost if later discovered;
6. by submission of this Proposal, the Proposing Vendor agrees to fully comply with all requirements of the RFP, and its separate parts, and any deviation noted in the Proposing Vendor's submission may be the basis for rejection of its Proposal by the NCEL without recourse;
7. the Proposing Vendor has read and understands the Act and all of the requirements contained in the RFP and any amendments thereto, the responses to written questions submitted by Vendors and its Proposal, and agrees to be bound by all the terms and conditions contained in each of these documents, without exception;
8. the Proposing Vendor has taken appropriate steps to completely and fully familiarize itself with the requirements of the RFP in order to render full performance under any resulting relationship between the NCEL and Proposing Vendor; and



9. the Proposing Vendor had the opportunity to submit written questions regarding the RFP and thereby address any concerns related to the RFP, and therefore, the Proposing Vendor has availed itself of every opportunity to understand its obligations contained in the RFP and any amendments thereto, the response to written questions and the Proposal.

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(Signature of Authorized Representative)

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(Print Name)

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(Title)

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(Date)

**ATTACHMENT B**

**PROPOSAL SIGNATURE AND CERTIFICATION**

I certify that this Proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a Proposal for the same materials, supplies, equipment or services and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of State and Federal Law and can result in fines, prison sentences and civil damage awards. I understand and agree to abide by all conditions of the RFP and this Proposal and certify that I am authorized to sign this Proposal for \_\_\_\_\_ (name of company submitting Proposal).

Date: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

## ATTACHMENT C

### CONTRACT COMPLIANCE AND FINANCIAL DISCLOSURE FORM

*For any subcontractor that comprises at least twenty-five (25%) of the cost of the Vendor's Proposal (a **'25% Subcontractor'**), disclose all the same information for each 25% Subcontractor as if each 25% Subcontractor were itself the Vendor. In addition, disclose all of the same information for each member of a joint venture, a strategic partnership or a prime contractor team as if each such joint venturer, strategic partner or member of a prime contractor team were itself the Vendor. (Vendor and all members of a joint venture, a strategic partnership or a prime contractor team are sometimes herein referred to as **"Vendor Team."**)*

[These pages may be copied and used as needed]

#### PLEASE PROVIDE THE FOLLOWING INFORMATION:

1. Name of Business:
2. Type of legal entity and the state under whose laws the business entity is organized:
3. Address:
  - a. All prior addresses for the prior ten (10) years:
4. Telephone Number, including area code:
5.
  - a. List any trade names or assumed names used:
  - b. List all states where each name is or has been used:
  - c. Attach verification of authorization to conduct business in the State of North Carolina.

List the name, address, area code and telephone number, and social security number of the Vendor's officers, directors and each stockholder if the Vendor is a corporation (in the case of a publicly-traded corporation, only those stockholders known to the corporation to own beneficially five percent (5%) or more of such corporation's securities), as well as the same information for a parent corporation of such Vendor corporation if the parent corporation's shares are publicly traded; if the Vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust; if the Vendor is an association, the member, officers and directors; if the Vendor is a partnership or joint venture, all general partners, limited partners or joint venturers:

- a. Name:  
  
Relationship to Vendor:  
  
Address:  
  
Telephone number, including area code:  
  
Social Security number:

- b. Name:
- Relationship to Vendor:
- Address:
- Telephone number, including area code:
- Social Security number:
- c. Name:
- Relationship to Vendor:
- Address:
- Telephone number, including area code:
- Social Security number:
7. Disclose all the states and jurisdictions (domestic and foreign) in which any member of the Vendor Team does business and the nature of the business for each such state or jurisdiction:
8. Disclose all the states and jurisdictions (domestic and foreign) in which any member of the Vendor Team has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the good or services involved for each such state or jurisdiction:
9. List all states and jurisdictions (domestic and foreign) in which any member of the Vendor Team has applied for, sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or lottery contract of any kind or has had fines or penalties assessed to his or its license, contract or operation and the disposition of such in each such state or jurisdiction. Include all facts or circumstances underlying the revocation or non-renewal of any lottery or gaming license or contract or any lottery or gaming license or application that has been either denied or is pending and has remained pending for more than six (6) months:
- a. State:
- Type of license:
- Status of license:
- Fines or penalties:
- Circumstances:
- b. State:
- Type of license:
- Status of license:

Fines or penalties:

Circumstances:

c. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

10. For each member of the Vendor Team, if applicable, list the details of any finding or pleas, conviction or adjudication of guilt in a state or federal court, or in another jurisdiction, for any felony or any other criminal offense other than a traffic violation, including, but not limited to, felonies related to the security or integrity of a lottery by:

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

11. For each member of the Vendor Team, if applicable, list the details of any finding or plea, conviction or adjudication of guilt in a state or federal court, or in another jurisdiction, of any involving gambling, theft, computer offenses, forgery, perjury, dishonesty or for unlawfully selling or providing a product or substance to a minor by:

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

12. For each member of the Vendor Team, if applicable, list the details of any bankruptcy, insolvency, reorganization or corporate or individual purchase or takeover of another business, including bonded indebtedness, or any pending litigation:
  - a. Filing or action:

Date of filing or action:

Court of filing or action:

Date of discharge if bankruptcy:

Pending litigation:
  - b. Filing or action:

Date of filing or action:

Court of filing or action:

Date of discharge if bankruptcy:

Pending litigation:
13. List the business entities that are a part of the Vendor Team, and list the Fiscal Years for each team member. Complete an Authorization For Investigation for each. (See Attachment D.)
14. List all the individuals constituting the Vendor Team who will work on the NCEL Contract. Complete a Consent Form for each (See Attachment E).
15. Does the Vendor Team or any individual member thereof have an ownership interest in any entity that has supplied consultation services under contract to the NCEL regarding this RFP? If yes, please provide details.
16. Does any "public officer" or employee of such public officer have an ownership interest of five percent (5%) or more in any member of the Vendor Team? If yes, please provide details.
17. List any conflict of interest with the products, promotions and goals contemplated by the NCEL that could result from other projects in which the Vendor Team or any of the staff members designated to work on the project are involved. Failure to disclose any such conflict may be cause for Contract termination or disqualification of the Proposal.
18. List all lobbyists and consultants working on behalf of the Vendor Team in connection with this Proposal or any subsequent Contract.

**Certification**

I, \_\_\_\_\_, hereby certify that I am duly authorized to act on behalf of the Vendor and Vendor Team. In that capacity, I hereby certify that the Vendor and all members of the Vendor Team have filed appropriate tax returns as provided by the laws of the State of North Carolina. I further warrant that the information contained in this Contract Compliance and Financial Disclosure Form is true and complete, and acknowledge that a finding that it is not true or complete may result in a cancellation of the Contract.

I further certify that the Vendor and each member of the Vendor Team recognizes and acknowledges that there are certain limitations on their activities, now and in the future, including, but not limited to, limitation on certain political contributions, limitation of the ability to submit proposals, in response to subsequent request for proposals issued by the NCEL, limitation on the ability to purchase lottery tickets. The restrictions on the ability to purchase lottery tickets and entering into contracts or other arrangements apply to the employees of the Vendor and the members of the Vendor Team as well as the members of all such employees' households, and the Vendor and each member of the Vendor Team will enforce such restrictions upon its employees and subcontractors.

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT D**

**AUTHORIZATION FOR INVESTIGATION**

I, \_\_\_\_\_, hereby authorize the North Carolina Education Lottery or its designee to conduct a Vendor background investigation (G.S. §18C-152), including the criminal and financial credit history of \_\_\_\_\_. I hereby release all organizations, individuals, agencies, and other employees and agents from any liability that may result from their furnishing such information and authorize all organizations, individuals, agencies and their employees and agents contacted by the North Carolina Education Lottery or its designee to provide such information. A photocopy of this release will be valid as an original thereof, even through said photocopy does not contain an original writing of my signature.

Business Address: \_\_\_\_\_

\_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**ATTACHMENT E**

**CONSENT FORM**

I hereby authorize the North Carolina Education Lottery to request and receive any criminal history record information pertaining to me that may be in the files of any criminal justice agency.

\_\_\_\_\_  
Full Name Printed  
(First, Middle, Last – ***no initials***)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Sex

\_\_\_\_\_  
Race

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date of Birth

\_\_\_\_\_  
SSN

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Notary

Date: \_\_\_\_\_

**ATTACHMENT F**

**EBO FORMS**

(See attached forms)

do hereby certify that on this Proposal, we will use the following minority business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**)

**RFP # LC-000003**

# State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

County of \_\_\_\_\_

(Name of Vendor)

Affidavit of \_\_\_\_\_

I have made a good faith effort to comply under the following areas checked:

**Vendors must earn at least 50 points from the good faith efforts listed for their Proposal to be considered responsive.** (1 NC Administrative Code 30 I.0101)

- ☐ **1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the Vendor, or available on State or local government maintained lists, at least 10 days before the Proposal date and notified them of the nature and scope of the work to be performed.
- ☐ **2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the Proposals are due.
- ☐ **3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☐ **4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the Proposal documents that provide assistance in recruitment of minority businesses.
- ☐ **5 – (10 pts)** Attended prebid meetings scheduled by the NCEL.
- ☐ **6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☐ **7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- ☐ **8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the Vendor's suppliers in order to help minority businesses in establishing credit.
- ☐ **9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- ☐ **10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

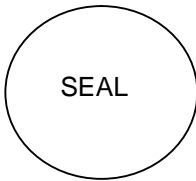
The undersigned, if declared to be the Successful Vendor, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of Contract to be executed with the NCEL. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the Contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the Vendor to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



**State of** \_\_\_\_\_, **County of** \_\_\_\_\_

**Subscribed and sworn to before me this** \_\_\_\_\_ **day of** \_\_\_\_\_  
\_\_\_\_\_ **20** \_\_\_\_\_

**Notary Public** \_\_\_\_\_

**My commission expires** \_\_\_\_\_

**State of North Carolina --AFFIDAVIT B-- Intent to Perform Contract  
with Own Workforce.**

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_

(Name of Vendor)

I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_

contract.

(Name of Project)

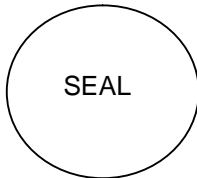
In making this certification, the Vendor states that the Vendor does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Vendor agrees to provide any additional information or documentation requested by the NCEL in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Vendor to the commitments herein contained.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_



Title: \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

# State of North Carolina - AFFIDAVIT C - Portion of the Work to be Performed by Minority Firms

County of \_\_\_\_\_

(Note this form is to be submitted only by the Successful Vendor.)

If the portion of the work to be executed by minority businesses as defined in GS143-128.2(g) is equal to or greater than 10% of the Vendors total Contract price, then the Vendor must complete this affidavit. This affidavit shall be provided by the Successful Vendor within **72 hours** after notification of being declared to be the Successful Vendor.

Affidavit of \_\_\_\_\_ I do hereby certify that on the \_\_\_\_\_  
(Name of Vendor)

(Project Name)

Project ID# \_\_\_\_\_ Amount of Proposal \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the Contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

Name and Phone Number	*Minority Category	Work description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**)

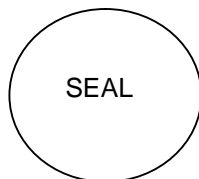
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a Contract with the NCEL. Failure to fulfill this commitment may constitute a breach of the Contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the Vendor to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Attachment F

Page 6

Do not submit with Proposal    Do not submit with Proposal  
Notary Public \_\_\_\_\_  
My commission expires \_\_\_\_\_



# State of North Carolina Efforts

## AFFIDAVIT D – Good Faith

County of \_\_\_\_\_

(Note this form is to be submitted only by the Successful Vendor.)

If the goal of 10% participation by minority business **is not** achieved, the Successful Vendor shall provide the following documentation to the NCEL of his good faith efforts:

Affidavit of \_\_\_\_\_ I do hereby  
certify that on the

(Name of Vendor)

(Project Name)

Project ID# \_\_\_\_\_ Amount of Proposal \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

Name and Phone Number	*Minority Category	Work description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**)

**Examples** of documentation that may be required to demonstrate the Vendor's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this Contract (if three (3) or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where Proposal documents can be reviewed, representative of the prime Vendor to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-vendor, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster.
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.

Attachment F

Page 8

I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required. Failure to provide the documentation as listed in these provisions may result in rejection of the Proposal and award to the next lowest responsible and responsive Vendor.

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the NCEL. Failure to fulfill this commitment may constitute a breach of the Contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the Vendor to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

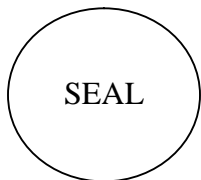


Exhibit A  
Proposed Contract

Exhibit A

## **PROFESSIONAL ADVERTISING AND RELATED SERVICES AGREEMENT**

THIS PROFESSIONAL ADVERTISING AND RELATED SERVICES AGREEMENT (the "**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2006 (the "**Effective Date**"), by and between THE NORTH CAROLINA EDUCATION LOTTERY ("**NCEL**"), a state agency created pursuant to the North Carolina State Lottery Act (G.S. § 18C-101 ~~et seq.~~) (as may be amended from time to time, the "**Act**"), and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ ("**VENDOR**").

### **W I T N E S S E T H:**

WHEREAS, NCEL was created to organize and operate a state lottery in the State of North Carolina (the "**Lottery**");

WHEREAS, VENDOR, on behalf of itself and certain of its "Subcontractors" (as defined in Section 3(a) hereof) with which it will enter into contracts, submitted the proposal, dated \_\_\_\_\_, 2006 attached hereto as Exhibit A and incorporated herein by this reference (the "**Proposal**") to NCEL in response to NCEL's Request For Proposals for Professional Advertising and Related Services, dated January 11, 2006, attached hereto as Exhibit B and incorporated herein by this reference (the "**RFP**"), as interpreted by NCEL's Answers to Questions concerning the RFP, which were distributed by NCEL on January 23, 2006, attached hereto as Exhibit C and incorporated herein by this reference (the "**Answers**"); and

WHEREAS, subject to the terms and conditions hereinafter set forth, NCEL desires to retain VENDOR to provide professional advertising and related services to NCEL, and VENDOR desires to provide such services for NCEL;

NOW, THEREFORE, for and in consideration of the premises, the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto hereby agree as follows:

#### **1. SERVICES**

Subject to the terms and conditions set forth in this Agreement, NCEL retains VENDOR to provide professional advertising and related services to NCEL as contemplated by this Agreement, the RFP and Answers (collectively, the "**Services**"), and VENDOR agrees to provide such Services to NCEL.

#### **2. DUTIES AND RESPONSIBILITIES OF VENDOR AND SUBCONTRACTORS**

(a) VENDOR and its Subcontractors will work in conjunction with the Director of NCEL (the "**Director**"), the NCEL staff, the NCEL Commission (the "**Commission**") and the other vendors, subcontractors, employees, agents, retailers and consultants of NCEL. VENDOR and its Subcontractors will provide the Services to NCEL as detailed in the RFP, the Answers and the Proposal and will perform such specific services and provide such deliverables as requested, from time to time, orally or in writing, by the Director, his designee(s) or the Commission. Except as otherwise set forth herein, VENDOR agrees that all Services and deliverables to be provided to NCEL under this Agreement shall meet or exceed the requirements as set forth in this Agreement, the RFP and the Answers.

(b) VENDOR, and its Subcontractors as requested from time to time, shall meet regularly with the Director or his designee(s) and shall establish work plans, implementation schedules and timetables for completion as and when required by the Director or his designee(s).

(c) VENDOR hereby agrees to use its best efforts to make available to NCEL, such of its employees and its Subcontractors as may be necessary or appropriate for the timely performance of VENDOR's obligations pursuant to this Agreement. No employee or agent of VENDOR or any of its Subcontractors shall undertake or participate in, during the term of this Agreement, any other engagement which will interfere with the completion of the work contemplated by this Agreement. VENDOR will provide to NCEL, as requested from time to time, written reports of the names and work schedules of VENDOR's and the Subcontractors' employees who will be performing services pursuant to this Agreement.

### 3. **SUBCONTRACTORS**

(a) None of VENDOR or any Subcontractors will subcontract or otherwise assign any or all of its duties or obligations under this Agreement to any individual or entity without the prior written consent of NCEL in each instance, which consent may be withheld in NCEL's sole discretion. VENDOR will provide NCEL with the name, qualifications, experience and expected duties of each proposed subcontractor under this Agreement each time it desires to retain a subcontractor. All subcontractors which are approved by NCEL for work pursuant hereto will be defined collectively as the "**Subcontractors**" and individually as a "**Subcontractor**" and will become a subcontractor for purposes hereof and must execute such agreements or other documentation as may be necessary pursuant to the Act or as NCEL may require. VENDOR agrees that it will obtain the prior consent of the Director or his designee(s) prior to having any Subcontractor perform any activities for NCEL under this Agreement.

(b) Upon the request of NCEL, VENDOR will promptly provide NCEL with copies of all subcontracts and other agreements entered into by VENDOR with respect to its obligations under this Agreement. No such subcontract or other agreement may contain any terms or conditions inconsistent or in conflict with the terms and conditions contained in this Agreement. In the event of any such inconsistent or conflicting provisions, such inconsistencies or conflicts will be resolved in favor of this Agreement.

(c) NCEL shall have the right, at any time and from time to time, to instruct VENDOR not to use the services of any Subcontractor, individual or employee in connection with the work to be performed for NCEL under this Agreement, and VENDOR agrees to comply with all such instructions.

(d) Notwithstanding anything herein to the contrary, VENDOR will remain fully liable and responsible for all Services, deliverables and work to be performed under this Agreement, whether or not subcontracted to or performed by a Subcontractor or any other person or entity retained by VENDOR or under VENDOR's control, and VENDOR will ensure the compliance of its employees, and will exercise its best efforts to ensure the compliance of, and in any event be responsible for, Subcontractors and their employees with the terms of this Agreement, the Act and all other applicable laws which govern the performance of services pursuant to this Agreement and such other standards or policies as NCEL may establish from time to time.

4. **INDEPENDENT CONTRACTOR.**

(a) Both NCEL and VENDOR, in the performance of this Agreement, will be acting in their own separate capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees, agents or partners of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property or other claim arising out of the acts or omissions of the other party or any of its agents, employees or subcontractors. It is expressly understood and agreed that VENDOR is an independent contractor of NCEL in all manners and respects and that neither party to this Agreement is authorized to bind the other party to any liability or obligation or to represent that it has any such authority, except for the limited authority of the Vendor to procure selected materials and services as authorized by NCEL and as specifically set forth in, and subject to the limitations described in, the RFP. No Subcontractor is authorized to bind NCEL to any liability or obligation or to represent that it has any such authority.

(b) VENDOR shall be solely responsible for all payments to Subcontractors and all compensation, withholding taxes and benefits for its employees and for providing all necessary unemployment and workmen's compensation insurance for its employees.

5. **COMPENSATION**

(a) As full and complete compensation for all Services and deliverables provided by VENDOR pursuant to this Agreement, NCEL will pay VENDOR, and VENDOR will accept, an amount equal to \_\_\_\_\_ percent (\_\_\_\_%) of the total annual fiscal year advertising budget handled by VENDOR (the "Vendor's Fee"); provided that advertising expenditures of NCEL shall not exceed one percent (1%) of the total annual fiscal year revenues of NCEL.

(b) Subject to the availability of funds and any other restrictions imposed by the Act, the "Governing Laws and Regulations" (as defined in Section 15) or this Agreement, NCEL will pay to VENDOR all uncontested amounts due under this Agreement on (i) in the case of media invoices, the fifteenth (15th) day of every month, and (ii) in the case of production invoices, the thirtieth (30th) day of every month, unless the parties otherwise agree upon a less frequent payment schedule, in accordance with the policies and procedures established by NCEL from time to time and subject to setoff or offset for all sums owed by VENDOR or its Subcontractors.

6. **TERM**

(a) Unless sooner terminated in accordance with the provisions of Section 19 or other provisions of this Agreement, the RFP or the Answers, and subject to the provisions of Section 25 hereof, the term of this Agreement shall commence as of the Effective Date and shall continue for a period of three (3) years from the Effective Date (the "**Initial Term**"). This Agreement shall be automatically renewed for a period of one (1) year (each a "**Renewal Term**") upon the completion of the immediately preceding Initial Term or Renewal Term, as the case may be, for a total of no more than three (3) Renewal Terms, unless the NCEL sends VENDOR at least thirty (30) days prior to the end of the then-current Initial Term or Renewal Term, written notice that it intends to terminate this Agreement at the end of the then-current Initial Term or Renewal Term.

(b) VENDOR acknowledges and agrees that, prior to the expiration of the term of this Agreement, NCEL will award a new contract for replacement of the Services and deliverables

provided by VENDOR under this Agreement and that VENDOR has no right or expectation in or to any such new contract. VENDOR further agrees that NCEL may use the final one hundred eighty (180) days of the term of this Agreement for transitioning the provision of such Services and deliverables; provided that VENDOR shall continue to be compensated in accordance with Section 5 hereof during such one hundred eighty (180) day period. VENDOR shall cooperate fully and in good faith and shall assist NCEL and the new contractor, to the extent reasonable and practical, to accomplish such conversion in a timely and efficient manner, at no additional cost to NCEL or such new contractor.

## **7. WORK STANDARD**

(a) VENDOR hereby agrees that it and its Subcontractors shall at all times comply with and abide by all terms and conditions set forth in this Agreement, all applicable policies and procedures of NCEL and all requirements of the Act and Governing Laws and Regulations. VENDOR further agrees that it and its Subcontractors shall perform their respective duties and responsibilities as set forth in this Agreement by following and applying the highest professional and technical guidelines and standards.

(b) VENDOR hereby agrees that it and its Subcontractors will perform their respective duties and responsibilities as set forth in this Agreement with integrity and dignity and free from political influence, collusion and fraud. VENDOR further agrees that none of it, its Subcontractors, nor any of their respective employees or agents will solicit or accept, or attempt to solicit or accept, any kickbacks or other inducements from any offeror, supplier, manufacturer or subcontractor in connection with the performance of its obligations under this Agreement.

(c) If NCEL becomes dissatisfied with the Services, deliverables or work product of or the working relationship with any of the individuals assigned to perform services under this Agreement by VENDOR or any Subcontractors, NCEL may require the prompt replacement of any or all of such individuals. Personnel identified in the Proposal as performing Services under this Agreement will continue to perform such Services in their designated capacities until such Services are completed unless they cease to be employed by VENDOR or a Subcontractor or unless NCEL requests their removal, in which case a person or persons of suitable competency and acceptable to NCEL, in its discretion, will be substituted forthwith.

(d) Nothing in this Section 7 shall be construed to prevent VENDOR from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of such key personnel, including secretarial, clerical and common labor duties. VENDOR shall at all times remain responsible for the performance of all necessary tasks under the scope of this Agreement, whether performed by key personnel or other workers.

(e) Nothing in this Agreement shall prohibit NCEL from retaining the services of any individual or entity to perform any services on its behalf, whether or not such or similar services were initially contemplated to be performed by VENDOR or a Subcontractor. NCEL is not prohibited by this Agreement from retaining the services of any individual or entity to perform any services it requires, and it is under no obligation to exclusively use the Services of VENDOR or any Subcontractors.

(f) VENDOR hereby designates \_\_\_\_\_, or such other person or persons as it may from time to time notify NCEL, as its primary contact with NCEL for purposes of this Agreement.

8. **PROGRESS REPORT**

To assure NCEL that its work under this Agreement is progressing and is being performed in a manner consistent with NCEL's policies until the start of instant and on line lottery system ticket sales, VENDOR will submit written progress reports to NCEL, no less frequently than weekly, covering all work performed by VENDOR and all Subcontractors in form and substance satisfactory to the Director.

9. **CHANGES IN WORK**

By written or oral request by the Director or his designee(s) to VENDOR, NCEL may from time to time make changes in the Services or deliverables to be provided by VENDOR or any Subcontractor, or the place of performance of such Services. VENDOR and all applicable Subcontractors shall promptly comply with such requests and take all necessary or appropriate actions to effect such change.

10. **BOOKS AND RECORDS**

VENDOR and each Subcontractor shall provide, as soon as it is available, to NCEL on an annual basis a copy of its audited financial statements for such year; provided, however, if a Subcontractor does not obtain audited financial statements, then its financial statements must be certified by its chief financial officer. VENDOR and all Subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the Services to be performed under this Agreement in accordance with the Act, Governing Laws and Regulations, generally accepted accounting principles and any other applicable procedures established by NCEL from time to time. VENDOR and all Subcontractors shall make all such materials available at its offices at all reasonable times during the term of this Agreement and for five (5) years after the date of final payment under this Agreement, for inspection by NCEL, or by any authorized representative of NCEL, and copies thereof shall be furnished to NCEL by the appropriate entity, at no cost to NCEL, if requested by NCEL. NCEL shall have the right to audit the records and operations of VENDOR and each Subcontractor with respect to the goods to be provided and Services to be performed pursuant to this Agreement. VENDOR and Subcontractor shall also comply with all other requirements of the Act and Governing Laws and Regulations.

11. **CONFIDENTIALITY: OWNERSHIP OF WORK PRODUCT**

(a) For purposes of this Agreement:

(i) "**Confidential Information**" means any and all items or information of a party which are: (A) marked "Confidential" or some such similar designation; or are (B) valuable, proprietary and confidential information belonging to or pertaining to such party that does not constitute a "Trade Secret" (as hereafter defined) and that is not generally known but is generally known only to said party and those of its employees, independent contractors or agents to whom such information must be confided for business purposes, including, without limitation, information regarding said party's customers, suppliers, manufacturers and distributors; and

(ii) a "**Trade Secret**" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that: (A) derives independent actual or potential commercial value from not being generally known or readily ascertainable thorough independent development or reverse engineering by persons who can obtain



economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) In recognition of the need of VENDOR to protect its legitimate business interests, NCEL hereby covenants and agrees that with regard to any: (i) VENDOR Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) VENDOR Trade Secrets, at all times such information remains a Trade Secret under applicable law, NCEL will regard and treat all such items as strictly confidential and wholly owned by VENDOR and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such VENDOR Confidential Information or VENDOR Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement, pursuant to the instructions from a duly authorized representative of VENDOR or except to the extent necessary to fulfill the purposes of this Agreement or conduct the North Carolina Lottery. NCEL shall not be liable, however, to VENDOR or to any other person or entity, if despite NCEL's reasonable efforts, VENDOR Confidential Information or Vendor Trade Secrets are disclosed in breach of the foregoing. Notwithstanding anything hereto the contrary, the entirety of Section 1.5 of the RFP, the Act, the Governing Laws and Regulations, the Open Meetings Law G.S. §143-318.9 et. seq. and the Open Records Law G.S. §132-1 et. seq. (collectively, the **"Superseding Provisions and Statutes"**) shall supersede and control any provision of this Agreement, and NCEL's confidentiality and nondisclosure obligations and liabilities set forth herein, or in the RFP, Answers or Proposal, shall be subject to, and never be greater than, as set forth in any of the Superseding Provisions and Statutes.

(c) In recognition of the need of NCEL to protect its legitimate business interests, VENDOR hereby covenants and agrees that with regard to any: (i) NCEL Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) Trade Secrets, at all times such information remains a Trade Secret under applicable law, VENDOR and all Subcontractors will regard and treat all such items as strictly confidential and wholly owned by NCEL and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such NCEL Confidential Information or NCEL Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement or pursuant to the instructions from a duly authorized representative of NCEL. In addition, to the extent the Act or any other Governing Laws and Regulations law imposes any greater restrictions or prohibitions with respect to any NCEL Confidential Information, NCEL Trade Secrets or other information or property of NCEL, VENDOR covenants and agrees that it and all Subcontractors shall comply with such greater restrictions or prohibitions. To ensure the compliance by it and all Subcontractors with the provisions of this Section 11(c), VENDOR shall use its best efforts, including, without limitation, obtaining written confidentiality agreements with all Subcontractors which incorporate requirements no less restrictive than those set forth herein and which contain provisions which permit NCEL to independently enforce the requirements set forth in such agreements.

(d) All deliverables, written materials, campaigns, designs, tangible or intangible materials, intellectual or other property or other work product of any kind or nature produced, revised, created, modified or prepared by VENDOR and any of its Subcontractors in connection with this Agreement, the RFP or the procurement covered by the RFP or for NCEL (collectively, the **"Work Product"**) will be deemed, to the greatest extent possible, "work made for hire" under Section 101 of the United States Copyright Act, 17 U.S.C. Section 101 to be exclusively owned by NCEL. To the extent that any Work Product does not qualify as a "work made for hire," VENDOR and each of the Subcontractors

hereby irrevocably transfer, assign and convey to NCEL all right, title and interest in the Work Product, together with all copyrights, patents, trade secrets, confidential information, trademarks (and the goodwill associated therewith) and service marks (and the goodwill associated therewith) rights (all of the foregoing being collectively defined as the “**Intellectual Property Rights**”), free and clear of any liens, security interests, hypothecations, pledges, claims or other encumbrances of any kind or nature, to the fullest extent permitted by law. At NCEL’s request, the VENDOR and its Subcontractors shall execute, and shall cause its or their personnel to execute, all assignments, applications, writings, instruments or other documentation of any kind or nature deemed necessary or beneficial by NCEL so that NCEL may perfect or protect its rights as provided herein. The VENDOR and its Subcontractors shall require its and their employees, and permitted agents, independent contractors and consultants to execute agreements assigning all of their rights in the Work Products, and all Intellectual Property Rights therein, to NCEL, directly or indirectly, and shall provide NCEL with documentation evidencing its compliance with this requirement upon NCEL’s request. The intent of NCEL is that NCEL is the sole owner of, and is able to continue to use any or all of, the Work Product that it chooses in the conduct of its the lottery games and other activities.

(e) Notwithstanding the foregoing, the nondisclosure restrictions of Section 11(b) shall not apply to VENDOR information that is: (A) generally known to the public other than due to a disclosure by NCEL; (B) already known to NCEL at the time it is disclosed by VENDOR to NCEL; (C) independently developed by NCEL; or (D) received by NCEL from a party that NCEL believed in good faith had the right to make such disclosure.

(f) Notwithstanding the foregoing, the nondisclosure restrictions of Section 11(c) shall not apply to NCEL information that is: (A) generally known to the public other than due to a disclosure by VENDOR or a Subcontractor; (B) already known to VENDOR at the time it is disclosed by NCEL to VENDOR; (C) independently developed by VENDOR; or (D) received by VENDOR from a third party that VENDOR believed in good faith had the right to make such disclosure.

## 12. **NONDISCRIMINATION: AFFIRMATIVE ACTION**

(a) None of VENDOR or any Subcontractors shall discriminate against any employee or applicant for employment because of his or her race, color, religion, sex, handicap, disability, national origin or ancestry. Breach of this covenant by VENDOR, or VENDOR's failure to use its best efforts to require all Subcontractors to comply with this covenant, may be regarded as a material breach of this Agreement. VENDOR and Subcontractors shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, disability, national origin or ancestry.

(b) Consistent with the Act and all other applicable North Carolina laws, VENDOR agrees to make every reasonable effort to include the participation by minority businesses in the performance of its Services pursuant hereto. Specifically, and without limitation, any human resources services performed for NCEL will include appropriate attention to the hiring and training of qualified minority applicants in accordance with the Act, all Governing Laws and Regulations, and the policies and procedures adopted by NCEL from time to time.

## 13. **LIMITATION OF LIABILITY**

**THE PAYMENT OBLIGATIONS UNDERTAKEN BY NCEL UNDER THIS AGREEMENT ARE SUBJECT TO THE AVAILABILITY OF FUNDS TO NCEL. THERE SHALL BE NO LIABILITY ON**

THE PART OF NCEL EXCEPT TO THE EXTENT OF AVAILABLE FUNDS PERMITTED TO BE PAID FROM THE PROCEEDS OF LOTTERY OPERATIONS AND OTHER FUNDS AVAILABLE TO NCEL. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL THE STATE OF NORTH CAROLINA, ITS GENERAL FUND OR ANY OF ITS AGENCIES OR POLITICAL SUBDIVISIONS BE RESPONSIBLE OR LIABLE AS A RESULT OF THIS AGREEMENT OR ANY LIABILITY CREATED HEREBY OR ARISING HEREUNDER.

14. **ANTITRUST ACTIONS**

VENDOR hereby conveys, sells, assigns and transfers to NCEL all of its right, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States of America and the State of North Carolina relating to any Services or deliverables provided by VENDOR to NCEL under this Agreement.

15. **COMPLIANCE WITH LAWS**

VENDOR agrees to comply with all applicable rules, procedures and regulations adopted from time to time by NCEL under the Act and all other applicable federal, state and local laws, rules, regulations, ordinances or executive orders, including, without limitation, the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 1201 *et. seq.*) and all other labor, employment and anti-discrimination laws, and all provisions required thereby to be included herein, are hereby incorporated by reference (all of the foregoing being sometimes referred to collectively as the "**Governing Laws and Regulations**").

16. **REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS**

VENDOR hereby represents, warrants or covenants, as the case may be, to NCEL, on its own behalf and with respect to each of its Subcontractors, that as of the Effective Date and at all times throughout the term of this Agreement, as follows:

(a) VENDOR has the power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and VENDOR has taken all necessary and appropriate action to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement. The execution and delivery of this Agreement and the performance of its obligations under this Agreement are not in contravention of any provisions of law or any material indenture or agreement by which VENDOR is bound and do not require the consent or approval of any governmental body, agency, authority or other person or entity which has not been obtained. This Agreement constitutes the valid and legally binding obligation of VENDOR, enforceable against VENDOR in accordance with its terms.

(b) VENDOR and its Subcontractors have disclosed or will disclose to NCEL all matters required to be disclosed under the Governing Laws and Regulations. In addition, VENDOR recognizes and acknowledges that there are certain limitations on its activities, and the activities of its Subcontractors, now and in the future, including, but not limited to, limitations on certain political contributions, limitations on the ability to submit proposals in response to subsequent requests for proposals issued by NCEL, limitations on the ability to enter into or perform contracts or other arrangements with certain third parties, and limitations on the ability to purchase lottery tickets, all of which shall be honored. Some of these restrictions also apply to the employees of VENDOR and the members of such employees' households, and VENDOR will enforce such restrictions upon its employees and Subcontractors.

(c) Neither VENDOR, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders have ever been found guilty of, or plead guilty to, any crime in any way related to the security, integrity or operation of any lottery in any jurisdiction, nor are VENDOR, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders currently under indictment for any crime in any way related to the security, integrity or operation of any lottery in any jurisdiction.

(d) Neither VENDOR, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders has an ownership interest in any entity that has supplied consultation services under contract to NCEL with respect to the RFP.

(e) No "public official" has an ownership interest of five percent (5%) or more in VENDOR or any of the Subcontractors.

(f) To the extent required by applicable law, VENDOR and all Subcontractors are, and will remain at all times during the term of this Agreement, qualified to do business in the State of North Carolina and will file North Carolina income tax returns.

(g) All Work Product: (i) shall be prepared, worked on and completed solely by employees of VENDOR or a Subcontractor in the scope of their employment or by independent contractors of VENDOR or a Subcontractor working under the strict and direct supervision of such employees; (ii) shall be original works of authorship; (iii) shall not infringe, plagiarize, pirate or constitute misappropriations of any Intellectual Property Rights, copyrights, trademarks, service marks, trade names, patents, Confidential Information, Trade Secrets or other intellectual properties or proprietary rights of any individuals or entities; and (iv) shall not be false, misleading, actionable, defamatory, libelous or constitute an invasion of privacy of any individual or entity.

(h) None of VENDOR or any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall issue any press release, conduct any press or news conference, participate in any media interview or otherwise make any public statement or announcement on behalf of, with respect to or in connection with this Agreement, NCEL or the Lottery without the prior written consent of the Director or his designee(s) in each instance.

(i) None of VENDOR or any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall use NCEL's name, logos, images or any other information or data related to the Services to be provided pursuant to this Agreement as a part of or in connection with any commercial advertising without the prior written consent of the Director or his designee(s) in each instance.

(j) All Services rendered and deliverables provided pursuant to this Agreement have been and shall be prepared or done in a workman-like manner consistent with the highest standards of the industry in which the Services and deliverables are normally performed.

#### 17. **OBLIGATIONS OF VENDOR**

(a) VENDOR shall provide to NCEL on an annual basis an updated certificate of existence showing that it and each Subcontractor are qualified to transact business in the State of North Carolina.

(b) VENDOR agrees to fully disclose to NCEL all matters materially affecting NCEL, this Agreement or the performance of this Agreement and all matters reasonably necessary to perform

background and security investigations with respect to VENDOR, the Subcontractors, their respective officers, directors, partners, major shareholders and employees, and the individuals performing services pursuant to this Agreement or otherwise for the benefit of NCEL or the Lottery. In addition, VENDOR acknowledges that some or all of its employees, officers, directors, partners and major shareholders, and its Subcontractors and their respective employees, officers, directors, partners and major shareholders, may be required to submit to background and other investigations, and VENDOR shall cause any such individuals or Subcontractors to fully cooperate with any such investigations and to provide all necessary information and authorizations in connection therewith. VENDOR further agrees that it will routinely and continuously update all information disclosed to NCEL pursuant to this Agreement or the RFP, including, without limitation, any breaches of all representations, warranties and additional covenants set forth in Section 16 hereof, no less often than every six (6) months; provided, however, VENDOR shall as soon as possible notify NCEL upon the occurrence of any event the effect or results of which VENDOR would be required to disclose, or to update a previous disclosure, to NCEL under this Agreement or the RFP and which materially affect NCEL, VENDOR, the Subcontractors, any of their respective officers, directors, partners, major shareholders or employees, this Agreement or the performance of this Agreement. VENDOR further agrees to notify NCEL: (i) as soon as possible, but no more than five (5) days after the filing of any criminal proceeding or issuance of any indictment involving VENDOR or any Subcontractor or any officer, director or employee of Vendor or any subcontractor; and (ii) within thirty (30) days of VENDOR's first learning of any civil or administrative proceeding involving VENDOR or any Subcontractor or any officer, director or employee of Vendor or any subcontractor; provided, however, if any such proceeding would have a material adverse affect on VENDOR or a Subcontractor or their ability to perform pursuant to this Agreement, then such notice must be delivered to NCEL no more than five (5) days after VENDOR learns of such proceeding.

(c) VENDOR must, contemporaneously with the execution of this Agreement, post and maintain at least throughout the term of this Agreement (i) a performance bond (the "**Performance Bond**") or letter of credit with NCEL in an amount equal to Five Hundred Thousand Dollars (\$500,000), and (ii) a payment bond (the "**Payment Bond**") or letter of credit with NCEL in an amount equal to Five Hundred Thousand Dollars (\$500,000), unless such bond or letter of credit is replaced by alternate acceptable security if approved by NCEL in its sole discretion. The security provided by VENDOR pursuant to the Performance Bond shall provide funds to NCEL in the event NCEL suffers any liability, loss, damage or expense as a result of VENDOR's failure to fully and completely perform any or all of the requirements contained in this Agreement, including, without limitation, VENDOR's obligation to indemnify NCEL pursuant hereto. The security provided by VENDOR pursuant to the Payment Bond shall provide funds to NCEL in the event NCEL suffers any liability, loss, damage or expense as a result of VENDOR's failure to fully and completely pay any obligation contained in this Agreement. The Bonds may be renewable annually, provided that: (i) each Bond provides that, in the event such Bond will not be renewed for an additional year, NCEL will be provided written notice thereof at least thirty (30) days prior to the expiration thereof; and (ii) if such Bond is not renewed for an additional year, VENDOR must obtain a replacement equivalent Bond or letter of credit to be in place so that at no time is VENDOR in violation of its obligation pursuant to this Section 17(c) to maintain a performance bond and a payment bond at least throughout the term of this Agreement.

(d) VENDOR shall maintain the following types and amounts of insurance during the term of this Agreement:

- i) General liability insurance in the amount of \$1,000,000;
- ii) Such other types and amounts of insurance as NCEL shall from time to time reasonably require;

- iii) Workers Compensation Insurance at or above levels required by the State of North Carolina; and
- iv) An advertising agency liability insurance policy which shall insure against any and all claims against NCEL based on libel, slander, piracy, plagiarism, invasion of privacy or infringement of copyright, trademark, service mark, logo, idea or tangible or intangible property arising out of any Work Product, other product or service prepared by VENDOR or its Subcontractors, notwithstanding the fact that any such material may have been approved by NCEL, in the amount of at least Five Hundred Thousand Dollars (\$500,000) per incident and One Million Dollars (\$1,000,000) in the aggregate. Such insurance policy shall name NCEL as an additional insured, and shall provide that such policy cannot be terminated, canceled, or modified without giving VENDOR and NCEL written notice at least ten (10) days prior to the effective date of any termination, cancellation or modification.

(e) VENDOR shall provide NCEL with certificates of insurance within ten (10) days after the date hereof and evidence of any renewed bonds or insurance policies within five (5) days prior to the expiration of the then existing bonds or insurance policies. All bonds and insurance required of VENDOR by this Agreement must be issued by companies or financial institutions which are financially rated A or better (or a comparable rating) by a nationally recognized rating agency and duly licensed, admitted and authorized to transact business in the State of North Carolina.

(f) VENDOR shall, at its own expense, conduct trademark and service mark searches with respect to trademarks, service marks, logos or trade names used by VENDOR in connection with NCEL.

#### 18. **TAXES**

NCEL will not be responsible for any taxes levied on VENDOR or any Subcontractor as a result of the execution, delivery or performance of this Agreement. VENDOR and Subcontractors shall pay and discharge any and all such taxes in a timely manner.

#### 19. **TERMINATION**

(a) Notwithstanding anything herein to the contrary, NCEL may cancel and terminate this Agreement: (i) if VENDOR fails to correct or cure any breach of any of Sections 7(b), 16(c), 16(d), 16(e), 16(h) or 17(b) of this Agreement (collectively, the "**Major Sections**") within seventy-two (72) hours of the earlier of: (A) VENDOR's having knowledge of such breach; or (B) VENDOR's receiving oral or written notice of such breach from NCEL; or (ii) if VENDOR fails to correct or cure any breach of any other provisions or Sections of this Agreement, other than Major Sections, after thirty (30) calendar days' prior written notice from NCEL.

(b) If NCEL, after thirty (30) calendar day's prior written notice from VENDOR, fails to correct or cure any breach of this Agreement, then VENDOR may cancel and terminate this Agreement and in due course collect monies properly due up to and including the date of such termination.

(c) In the event that either party hereto is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies or communication line failure, or other events of force majeure not the fault of the affected party, the affected party shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, each party's obligations under this Agreement shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of an event described in this Section 19(c), the party whose ability to perform has not been so affected may terminate this Agreement by giving written notice thereof to the other party.

(d) If, for any reason other than a breach of this Agreement by NCEL, VENDOR is unable to perform its obligations hereunder, NCEL shall acquire a usufruct in all contractual items owned by VENDOR or any Subcontractor which is used in conjunction with, and is necessary to, the performance of this Agreement, which usufruct shall exist until the expiration or termination of this Agreement.

## 20. **INDEMNIFICATION**

(a) VENDOR agrees to indemnify, defend and hold harmless NCEL, the Commission, its directors and officers, the State of North Carolina and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, caused by or resulting from any breach of this Agreement or any other act or omission of VENDOR, the Subcontractors, or any of its or their respective agents or employees, whether the same may be the result of negligence, responsibility under strict liability standards, any other substandard conduct or otherwise.

(b) In addition, VENDOR agrees to indemnify, defend and hold harmless NCEL, the Commission, its directors and officers, the State of North Carolina and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, arising out of, in connection with or resulting from the development, possession, license, modifications or use of any copyrighted or non-copyrighted composition, trademark, service mark, service process, patented invention or item, trade secret, article or appliance furnished to NCEL, or used in the performance of this Agreement, by VENDOR or any Subcontractor, excluding claims for personal injury.

## 21. **CONFLICT RESOLUTION PROCEDURES**

Prior to bringing any judicial enforcement action with respect to any claims or controversies arising in connection with the performance of this Agreement, VENDOR must first pursue and exhaust any and all remedies available to it in accordance with the dispute resolution procedures adopted by NCEL, as amended from time to time (collectively, the "**Dispute Resolution Procedures**").

## 22. **NOTICES**

(a) All notices and statements provided for or required by this Agreement shall be in writing, and shall be delivered personally to the other designated party, or mailed by certified or registered mail, return receipt requested, or delivered by a recognized national overnight courier service, as follows:

If to NCEL:

North Carolina Education Lottery

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: Thomas N. Shaheen, Director

with a copy to:

William B. Marianes, Esq.  
McGuire Woods LLP  
Bank of America Corporate Center  
100 North Tryon Street  
Suite 2900  
Charlotte, NC 28202-4011

If to VENDOR:

VENDOR

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

(b) Either party hereto may change the address and/or person to which notice is to be sent by written notice to the other party in accordance with the provisions of this Section 22.

## 23. **MISCELLANEOUS**

(a) This Agreement, together with the Proposals, the Answers and the RFP, contains the entire agreement and understanding concerning the subject matter hereof between the parties hereto. Notwithstanding anything herein to the contrary, in the event of an inconsistency among this Agreement, the Proposal, the Answers and/or the RFP, the terms of this Agreement, as may be amended pursuant hereto, shall control the Answers, the terms of the Answers shall control the RFP, and the terms of the RFP shall control the Proposal. No waiver, termination or discharge of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party hereto unless confirmed in writing. This Agreement may not be modified or amended, except by a writing executed by both parties hereto. No waiver by either party hereto of any term or provision of this Agreement or of any default hereunder shall affect such party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

(b) **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA. ONLY AFTER EXHAUSTION OF ALL REMEDIES AND PROCEDURES IN THE DISPUTE RESOLUTION PROCEDURES OF NCEL, IF APPLICABLE LAW PERMITS ANY FURTHER APPEALS, ANY SUCH APPEAL MUST BE BROUGHT SOLELY IN THE SUPERIOR COURT OF WAKE COUNTY, NORTH CAROLINA. VENDOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT WHICH IT MAY NOW OR HEREAFTER HAVE TO APPEAL ANY FINAL DECISIONS OF THE COMMISSION MADE PURSUANT TO THE DISPUTE RESOLUTION PROCEDURES, AND VENDOR IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY APPEAL BEING SOLELY IN THE SUPERIOR COURT OF WAKE COUNTY, NORTH CAROLINA.**



(c) Neither party hereto shall assign this Agreement, in whole or in part, without the prior written consent of the other party hereto, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect; provided, however, nothing herein shall prevent NCEL from freely assigning this Agreement, without requiring VENDOR's prior written consent, to any entity which operates or will operate the Lottery. For purposes of this Section 23(c), any sale or transfer of a controlling equity interest in, or substantially all of the assets of, VENDOR will be deemed an assignment for which NCEL's consent is required.

(d) This Agreement shall be binding on VENDOR, and its Subcontractors, successors and permitted assigns.

(e) The headings contained herein are for the convenience of the parties only and shall not be interpreted to limit or affect in any way the meaning of the language contained in this Agreement.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind such party.

(g) If any provision of this Agreement shall be held void, voidable, invalid or inoperative, no other provision of this Agreement shall be affected as a result thereof, and accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein.

(h) Upon the request of either party, the other party agrees to take, and VENDOR agrees to cause any Subcontractor to take, any and all actions, including, without limitation, the execution of certificates, documents or instruments, necessary or appropriate to give effect to the terms and conditions set forth in this Agreement.

#### **24. ADDITIONAL SERVICES**

In the event NCEL desires to retain the services of VENDOR for activities in addition to those contemplated by this Agreement, and VENDOR agrees to perform such services, payment therefor shall not exceed the rates identified in this Agreement unless agreed to in writing by NCEL. Any such services, the rates, and the terms of payment shall be approved, in writing, prior to the commencement of any such additional work. In no event shall VENDOR or any Subcontractor be paid for work not authorized, or for work in excess of that authorized, in writing by NCEL.

#### **25. APPROVAL OF COMMISSION AND REQUIRED INVESTIGATIONS**

NCEL and VENDOR hereby agree that this Agreement, and all of the terms and conditions contained herein, is subject to the approval of the Commission and the completion of all criminal and other background investigations required by the Act, Governing Laws and Regulations or NCEL. This Agreement will not be binding upon NCEL until the completion of all such investigations and the Commission has expressly approved the awarding of the Agreement to VENDOR and executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement to be effective as of the Effective Date.

"NCEL"

NORTH CAROLINA EDUCATION LOTTERY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

"VENDOR"

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT A

[Proposal]

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EXHIBIT B

[RFP]

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EXHIBIT C

[Questions and Answers]

## **NASPL ADVERTISING STANDARDS**

### **Approved March 19, 1999**

#### **Introduction**

The producers and marketers of lottery products encourage responsible decision-making regarding lottery play by adults, and discourage abusive use of their products. The lottery industry urges that adults who choose to play the lottery, do so responsibly. Signatory NASPL members will conduct their advertising and marketing practices in accordance with the provisions of these Standards.

#### **Content**

1. Advertising should be consistent with principles of dignity, integrity, mission and values of the industry and jurisdictions.
  - Advertising should neither contain nor imply lewd or indecent language, images nor actions.
  - Advertising should not portray product abuse, excessive play nor a preoccupation with gambling.
  - Advertising should not imply nor portray any illegal activity.
2. Advertising should not degrade the image or status of persons of any ethnic, minority, religious group nor protected class.
3. Advertising by lotteries should appropriately recognize diversity in both audience and media, consistent with these standards.
4. Advertising should not encourage people to play excessively nor beyond their means.
  - Advertising and marketing materials should include a responsible play message when appropriate.
  - Responsible play public service or purchased media messages are appropriate, especially during large jackpot periods.
  - Support for compulsive gambling programs, including publications, referrals and employee training is a necessary adjunct to lottery advertising.

- Advertising should not present, directly nor indirectly, any lottery game as a potential means of relieving any person's financial or personal difficulties.
- Advertising should not exhort play as a means of recovering past gambling nor other financial losses.
- Advertising should not knowingly be placed in or adjacent to other media that dramatize or glamorize inappropriate use of the product.

## **Tone**

1. The Lottery should not be promoted in derogation of nor as an alternative to employment, nor as a financial investment nor a way to achieve financial security.
2. Lottery advertisements should not be designed so as to imply urgency, should not make false promises and should not present winning as the probable outcome.
3. Advertising should not denigrate a person who does not buy a lottery ticket nor unduly praise a person who does buy a ticket.
4. Advertising should emphasize the fun and entertainment aspect of playing lottery games and not imply a promise of winning.
5. Advertising should not exhort the public to wager by directly or indirectly misrepresenting a person's chance of winning a prize.
6. Advertising should not imply that lottery games are games of skill.

## **Minors**

1. Persons depicted as lottery players in lottery advertising should not be, nor appear to be, under the legal purchase age.
2. Age restrictions should, at a minimum, be posted at the point of sale.
3. Advertising should not appear in media directed primarily to those under the legal age.
4. Lotteries should not be advertised nor marketed at venues where the audience is reasonably and primarily expected to be below the legal purchase age.
5. Advertising should not contain symbols nor language that are primarily intended to appeal to minors or those under the legal purchase age.

- The use of animation should be monitored to ensure that characters are not associated with animated characters on children's programs.
- Celebrity or other testimonials should not be used which would primarily appeal to persons under the legal purchase age.

### **Game Information**

1. Odds of winning must be readily available to the public and be clearly stated.
2. Advertising should state alternative cash and annuity values where reasonable and appropriate.

### **Beneficiaries**

1. Lotteries should provide information regarding the use of lottery proceeds.
2. Advertising should clearly denote where lottery proceeds go, avoiding statements that could be confusing or misinterpreted.